(30,018)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 708

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, ET AL., PETITIONERS,

vs.

THE UNITED STATES EX REL. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 1] PLACITA—Omitted

[fol. 2] IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

BILL OF COMPLAINT—Filed Jul. 20, 1922

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, Plaintiff,

vs.

R. A. HENNING, as President of the Joint Federation of Shop Craft Employes of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, System Federation Number 75, located at St. Paul, Minnesota, individually and as representative of the members of said Association; W. A. Parranto, as Vice President of the Joint Federation of Shop Craft Employes of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, System Federation Number 72, located at St. Paul, Minnesota, individually and as representative of the members of said Association; John Williams, as Secretary and Treasurer of the Joint Federation of Shop Craft Employes of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, System Federation Number 75, located at St. Paul, Minnesota, individually and as representative of the members of said Association; R. A. Henning, as General Chairman, District Number 32, International Association of Machinists, located at St. Paul, Minnesota, individually and as representative of the members of said Association; M. Adams, as General Chairman, District Number 32, International Association of Machinists, located at St. Paul, Minnesota, individually and as representative of the members of said Association; W. A. Parranto, as General Chairman, District Number 25, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, located at St. Paul, Minnesota, individually and as representative of the members of said Association; Elmer Olson, as Chairman of the Local Federated Shop Committee, located at Altoona, Wisconsin, individually and as representative of the members of said Association; H. J. Burns, W. Edgell and E. Olson, as the Local Strike Committee of the International Association of Machinists, located [fol. 3] at Altoona, Wisconsin, individually and as representatives of the members of said Association; Ed. Peterson, Ed. Babington and Mike Wilman, as Strike Committee for the International Brotherhood of Boilermakers, located at Altoona, Wisconsin, individually and as representatives of the members of said Association; H. E. Bonell, as a member of the Strike Committee for the International Brotherhood of Electric Workers, located at Altoona, Wisconsin, individually and as representative of the members of said Association; H. Foss and M. Board, as members of the Strike

Committee for the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, located at Altoona, Wisconsin, individually and as representatives of the members of said Association; Charles Turner, as a member of the Strike Committee of Railway Carmen of America, located at Altoona, Wisconsin, individually and as representative of the members of said Association; Lee R. Corrigan, as Chairman of the Local Federated Shop Committee, located at Elroy, Wisconsin, individually and as representative of the members of said Association; A. A. Marceau, as Chairman of the Local Federated Shop Committee, located at Itasca, Wisconsin, individually and as representative of the members of said Association; William Campaigne, as Chairman of the Local Federated Shop Committee, located at Spooner, Wisconsin, individually and as representative of the members of said Association; Joe Cuskey and Charles Kingston, as members of the Strike Committee of the Federation of Shop Craft Employes, located at Spooner, Wisconsin, individually and as representatives of the members of said Association; Ole Hammer, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Ashland, Wisconsin, individually and as representative of the members of said Association; Morris Chaffee, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Spooner, Wisconsin, individually and as representative of the members of said Association; Anton Flaten, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Superior, Wisconsin, individually and as representative of the members of said Association; Charles Meyers, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Elroy, Wisconsin, individually and as representative of the members of said Association; [fol. 4] R. J. Birkmose, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; A. G. Svarstad, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; H. R. Lee, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; C. M. Jennings, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; George Starr, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; Marcus Kemp, as Chairman, and John W. Clark, as Secretary, respectively, of Lodge No. 343 of the International Association of Machinists, located at Superior, Wisconsin, individually and as representatives of the members of said Association; Charles Weber, as Chairman, and Theodore Graffer, as Secretary, respectively, of Lodge No. 483 of Amalgamated Sheet Metal Workers' International Alliance, located at Superior, Wisconsin, individually and as representatives

of the members of said Association; Frank Berger as Chairman, and Frank Burke, as Secretary, respectively, of Lodge No. 319 of International Brotherhood of Boilermakers, located at Superior, Wisconsin, individually and as representatives of the members of said Association; J. F. Peterson, as Chairman, and E. T. Calvert, as Secretary, respectively, of Lodge No. 81 of International Brotherhood of Blacksmiths, located at Superior, Wisconsin, individually and as representatives of the members of said Association; Ed. Lafferty, as Chairman, and Frank Kumhera, as Secretary, of Lodge No. 1016 International Brotherhood of Electrical Workers, located at Superior, Wisconsin, individually and as representatives of the members of said Association; Carl Milde, as Chairman, and Ed. Anderson, as Secretary, respectively, of Lodge No. 662 of the Brotherhood of Railway Carmen of America, located at Superior, Wisconsin, individually and as representatives of the members of said Association; and all persons combining and conspiring with [fol. 5] them, of whom those named are representatives, Defendants.

Petition in Equity

1. The plaintiff, Chicago, St. Paul, Minneapolis and Omaha Railway Company, alleges that it is a railway corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, and is a citizen and resident of said state.

2. That certain of the defendants, as hereinafter more specifically set out, are citizens and residents of the State of Minnesota and that the other defendants named in the caption of this petition are located within the Western District of Wisconsin.

3. Plaintiff further alleges that the controversy involved herein is of a civil nature and is a controversy between the plaintiff, a citizen and resident of the State of Wisconsin, and the defendants, and their associates, a part of whom, as hereinafter set forth, are citizens and residents of the State of Minnesota, and is a controversy between citizens of different states, and that the amount in controversy, exclusive of interests and costs, exceeds the sum or value of three thousand dollars ($3,000.00), and in fact exceeds the sum of fifty thousand dollars ($50,000.00); that the controversy also arises under the Constitution and Laws of the United States, and particularly those regulating interstate commerce and prohibiting interference therewith; also the Sherman Anti-Trust Act, so-called, [fol. 6] approved July 2, 1890; the Clayton Act, so-called, approved October 5, 1914; the various Acts pertaining to the transportation of mails, and particularly the Appropriation Act of July 28, 1916; the Act to Regulate Commerce, of 1887, as amended; the Transportation Act, 1920, approved February 28, 1920; the Safety Appliance Acts, so-called, as amended; that the damages resulting to plaintiff from the acts and conspiracies and combinations of the defendants, as will be hereinafter more fully alleged, and the loss and damage to the plaintiff from the continuance of the unlawful

conspiracies and wrongful and illegal acts of the defendants exceeds said sum of fifty thousand dollars ($50,000.00).

4. Plaintiff further alleges that the Joint Federation of Shop Craft Employes is a labor union organization whose members are composed of machinists, boilermakers, iron ship builders, blacksmiths, drop forgers, sheet metal workers, electrical workers, carmen, their apprentices and helpers, some of whom were formerly employed by plaintiff and other railroads in the United States, and the members of said organization act in concert under the direction of the officers of said Associaion, and the defendants, R. A. Henning, of St. Paul, Minnesota, W. A. Parranto, of St. Paul, Minnesota, John Williams, of St. Paul, Minnesota, are, respectively, President, Vice President and Secretary & Treasurer of their organization at said respective place along the line of railroad of the plaintiff and, as such President, Vice President and Secretary & Treasurer, have charge and control of the membership of said organization, including the membership of said organization located at Superior, Hudson, Elroy, Spooner, Altoona, Eau Claire and Ashland, in the State of Wisconsin, as the complainant is informed and believes, and direct their conduct and movement as strikers, as hereinafter described; that System Federation of Shop Craft Employes is a labor union organization whose members are composed of machinists, boilermakers, iron ship builders, blacksmiths, drop forgers, sheet metal workers, electrical workers, carmen, their apprentices and helpers, some of whom were formerly employed by the plaintiff and other railroads in the United States, and the members of said organization act in concert under the direction of the officers of said As- [fol. 7] sociation, and the defendants Elmer Olson, H. J. Burns, W. Edgell, E. Olson, Ed. Peterson, Ed. Babington, Mike Wilman, H. E. Bonell, H. Foss, M. Board and Charles Turner, of Altoona, Wisconsin, Lee R. Corrigan and Charles Meyers, of Elroy, Wisconsin, A. A. Marceau, of Itasca, Wisconsin, William Campaigne, Joe Cuskey, Charles Kingston and Morris Chaffee, of Spooner, Wisconsin, Ole Hammer, of Ashland, Wisconsin, Anton Flaten, Marcus Kemp, John W. Clark, Charles Weber, Theodore Graffer, Frank Berger, Frank Burke, J. F. Peterson, E. T. Calvert, Ed. Lafferty, Frank Kumhera, Carl Milde and Ed. Anderson, of Superior, Wisconsin, R. J. Birkmose, A. G. Svarstad, H. R. Lee, C. M. Jennings and George Starr, of Hudson, Wisconsin, are officers and members of the strike committee, general or local chairmen or local secretaries of their organization at said respective places along the line of the railroad of the plaintiff and, as such officers, general or local chairmen or local secretaries, have charge and control of the membership of said organization and direct their conduct and movement as strikers, as hereinafter described; that International Association of Machinists is a labor organization whose members are composed of machinists, machinists' apprentices and machinists' helpers, some of whom were formerly employed by the plaintiff and other railroads in the United States, and the members of said organization act in concert under direction of the officers of said Association, and

the defendants Marcus Kemp and John W. Clark, of Superior, Wisconsin, are Local Chairman and Local Secretary of their organization at said place along the line of railroad of the plaintiff and, as such local chairman and local secretary, have charge and control of the membership of said organization and direct their conduct and movement as strikers, as hereinafter described; that International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America is a labor organization some of whose members were formerly employed by this plaintiff and other railroads in the United States; that the membership of said organization is under the control of the officers of said organization and the defendants Frank Berger and Frank Burke, of Superior, Wisconsin, are Local Chairman and Local Secretary of their organization at said named place and, as such, have charge and direction and control of the members of said organization at said place, which is situated along the line of railroad of plaintiff; that International Brotherhood of Blacksmiths, Drop [fol. 8] Forgers and Helpers is a labor organization some of whose members were formerly employed by the plaintiff and other railroads in the United States, and which membership is under the direction and control of the officers of said organization, and that the defendants J. F. Peterson and E. T. Calvert are the Local Chairman and Local Secretary, respectively, of the local lodge at said place and, as such, have charge of the members of said association at said place and direct the activities and the movements of said membership as strikers, as hereinafter referred to; that the Brotherhood of Railway Carmen of America is a labor organization some of whose members were formerly employed by the plaintiff and other railroads in the United States and are under the direction and control of the officers of said organization, and that the defendants Carl Milde and Ed. Anderson, of Superior, Wisconsin, are the Local Chairman and Local Secretary, respectively, of the local lodge of said organization at said named place and, as such, have direction and charge of the conduct and action of the members of said organization at said place as strikers, as hereinafter described; that the Amalgamated Sheet Metal Workers' International Alliance is a labor organization whose members were formerly employed by the plaintiff and other railroads in the United States and are under the direction and control of the officers of said organization, and that the defendants Charles Weber and Theodore Graffer, of Superior, Wisconsin, are the Local Chairman and Local Secretary, respectively, of said organization at said named place and, as such, have direction and charge of the conduct and action of the members of said organization at said place as strikers, as hereinafter described; that the International Brotherhood of Electrical Workers is a labor organization some of whose members were formerly employed by the plaintiff and other railroads in the United States and are under the direction and control of the officers of said organization, and that the defendants Ed. Lafferty and Frank Kumbera are the Local Chairman and Local Secretary, respectively, of said organization at said named place and, as such, have direction and charge of the conduct

and action of the members of said organization at said place as strikers, as hereinafter described.

That each and all of the individual defendants named herein represent a class of numerous and divers persons, members of said labor organizations, and being of a class so numerous as to make it impossible to bring them all before the Court, and, therefore, each and [fol. 9] all of said individual defendants are made parties hereto, in their individual capacity and as representatives of the said class of ex-employes engaged in the strike hereinafter referred to.

Complainant is unable to name each and several the members of said associations, the names of such individual members being unknown to the complainant, and the number thereof aggregating many hundreds, and the number thereof, as the complainant believes, aggregating more than one thousand.

Complainant is also unable to name all of the persons combining and conspiring and sympathizing with the named defendants herein, but the complainant does allege that a very great number of persons, aggregating several thousands, have been and are in fact combining and conspiring with the named defendants in the doing of all the unlawful acts herein described, and in threatening and continuing to conspire and do all of the unlawful acts herein described, and a large majority of the persons so combining, and so doing the unlawful acts herein described, and whose names are unknown to complainant, are members of the said voluntary associations, but all of the persons combining and conspiring with the named defendants act in concert in the carrying out of the objects and purposes of the said association, and of the individuals specifically names as defendants.

All the facts and conditions herein set forth and described are of common and general interest to all of the named defendants, and to all of the un-named persons combining and conspiring with the named defendants, and the named defendants represent and act for and on behalf of the un-named defendants in the accomplishment of the unlawful acts hereinafter more particularly described.

5. Plaintiff further alleges that it is a corporation engaged in the business of a common carrier for hire. That as such it owns and operates a railway system extending into and through the States of Iowa, Wisconsin, Minnesota, Nebraska, South Dakota. That in prosecuting its business as a common carrier it transports freight, passengers and United States mail in the usual and ordinary method incident to that of a railway transportation system, and it serves the public in the usual and ordinary way pursuant to the laws and regulations of the Federal Government and the various States in and [fol. 10] through which it operates; and that in excess of eighty per cent (80%) of all its business, both freight and passenger is interstate commerce.

6. Plaintiff further alleges that pursuant to lawful contract entered into with the United States Government, and pursuant to obligations imposed upon it by the Statutes of the United States Government, it is obliged to transport and carry the mails and parcels-

post of the United States of America, both interstate and intrastate, without hindrance or interruption, and that the patrons of plaintiff along its lines of railway and the communities and industries it serves are dependent upon the Plaintiff for the regular and prompt transportation of the said United States mails and parcels post, and in addition thereto said patrons, communities, people and industries served by Plaintiff are dependent upon it for their comforts and the necessities of life and the continuance of their several lines of work and business, and that any interruption of the traffic of plaintiff, either in the handling of its freight or passengers or in the transportation of the United States mails and parcels post, will result in immediate and irreparable injury to the Plaintiff and to the people, industries and communities served by the Plaintiff in a large measure dependent upon the Plaintiff for the transportation of property, persons and the United States mail.

7. Plaintiff further alleges that it not only transports property, persons and the United States mail in the States hereinbefore mentioned, but that it exchanges such traffic with connecting lines of railway to the extent that all parts and sections of the United States are in some measure dependent upon the continuous and uninterrupted transportation service rendered and to be rendered by Plaintiff, in the proper, efficient and lawful prosecution of its business as a common carrier. And in this connection Plaintiff further alleges that its lines of railway serve some of the large cities of the country, such as Omaha, St. Paul, Minneapolis, Duluth, Sioux City, Sioux Falls and other important centers of population, and that said cities and the people thereof have so developed that they chiefly depend upon the railroads, including Plaintiff, for the continuance of their busi- [fol. 11] ness activities as well as the comfort and welfare of their citizens, and that any cessation of a substantial part of the transportation service of the said Plaintiff in and about the said cities along the lines of railway will not only interfere with and in a large measure interrupt and stop the industry and business of said cities and the inhabitants thereof, but also will, to a substantial and serious extent prevent the transportation to said cities of the supplies necessary to the life and comfort of the citizens and inhabitants thereof.

8. Plaintiff further alleges that in the conduct of its business as a common carrier of both interstate and intrastate commerce, it employs and it is necessary to employ large numbers of persons, not only to operate its trains but also to repair its locomotives, cars equipment and rolling stock, of all classes and description. That for this purpose it employs thousands of men in the construction, repair and maintenance of its said equipment including cars and locomotives; and Plaintiff shows that it is necessary in the conduct of its business as a common carrier and to comply with the provisions of the Federal Safety Appliance Acts that its equipment should be kept in good and proper repair so that the traffic hereinbefore described may be carried on without interruption and with regularity and continuity of service.

9. Plaintiff further alleges that its duty and its right to engage in and carry on the business of both interstate and intrastate commerce constitutes and is in and of itself a property right, and that said right is now being seriously interfered with to the extent that unless the relief hereinafter prayed for is granted Plaintiff, the Plaintiff and the people and communities dependent upon Plaintiff for transportation service will all suffer irreparable injury for which there is and can be no adequate remedy at law. Plaintiff avers that it has a lawful right to carry on its business in an orderly manner without interference or molestation from any of the Defendants, either acting singly or jointly, and that damage to the Plaintiff, which it is bound to and will suffer unless the Defendants are restrained as hereinafter prayed, will result from the destruction, in-[fol. 12] terference and interruption of Plaintiff's business as a common carrier of both interstate and intrastate commerce, and the amount of such damage will far exceed the sum of Fifty Thousand and no/100 Dollars ($50,000.00), for all of which there is no adequate remedy at law, and such remedy as may exist would result in and require numerous and divers actions with no hope of securing ultimate adequate compensation for the injuries which Plaintiff will sustain.

10. Plaintiff further alleges that by the provisions of an Act of Congress commonly referred to as the Sherman Law, it is made unlawful for any person to conspire or enter into a conspiracy the object of which is to restrain or interfere with trade or commerce among the several states. That by virtue of Section 16 of the Act commonly known as the "Clayton Act," Plaintiff is given the right to maintain an action for injunction against every person entering into, forming or promulgating or participating in any conspiracy looking to the interruption or restraint of commerce between the several states. That the Defendants and each and all of them have entered into a conspiracy for the purpose of restraining and interfering with commerce between the several States, carried on and to be carried on by the Plaintiff, pursuant to the prosecution of its business and its duty as a common carrier of persons and property, both interstate and intrastate, and that as a part of said conspiracy the said Defendants have entered upon a campaign and course of procedure aimed at the prevention of the repair of Plaintiff's locomotives, cars and equipment used in the prosecution of its business, and to this end said Defendants and each and all of them are adopting means unlawful in their character to prevent the Plaintiff from employing men to work in its shops at the Cities of Superior, Hudson, Elroy, Spooner, Altoona, Eau Claire and Ashland in said District and elsewhere therein, where it carries on the general repair of its locomotives, cars and equipment; and in furtherance of such conspiracy the said Defendants, and each of them are adopting unlawful means to coerce, prevent and interfere with the lawful employment of employes,—all of which will be more particularly hereinafter alleged.

[fol. 13] 11. Plaintiff further alleges that under the Act of Congress commonly known as the "Transportation Act," the Federal

Government has created the United States Railroad Labor Board, for the purpose of settling all disputes and controversies between common carriers and their employes. That a dispute arose between Plaintiff and the members of each of the above named labor organizations, including Defendants, regarding the scale of wages to be paid to employes of the classes to which Defendants belong. For the purpose of adjusting said dispute pursuant to the Transportation Act, Plaintiff and said employes, including defendants, submitted the questions in dispute to the United States Railroad Labor Board, and said Labor Board after due hearings at which both said employes and Plaintiff introduced evidence, did on the 25th day of May, 1922 render its decision and prescribe, effective July 1, 1922, a scale of wages for the classes of employes to which Defendants belong. That under the provisions of said "Transportation Act" it becomes and is the duty of Plaintiff to apply and to pay the scale of compensation thus prescribed by the United States Labor Board and Plaintiff has the legal right, duty and obligation arising out of and under the provisions of said Transportation Act of paying as compensation for services rendered by its employe the scale of wages thus promulgated and made effective by the decisions of said Labor Board. That the Defendants, and each and all of them, have entered into and are now promulgating, carrying on and prosecuting a conspiracy in the manner hereinbefre and as will be hereinafter more specifically described, not only to interrupt and interfere with the business of Plaintiff in the manner as hereinbefore set forth, but to prevent and interfere with Plaintiff in obeying, observing and complying with the decision of the United States Labor Board, effective July 1, 1922, fixing the scale of compensation to be paid by Plaintiff as a common carrier, under the terms of the said Transportation Act. That by virtue of the provisions of the Interstate Commerce Act Plaintiff is required to conduct its business as a common carrier in an honest, efficient and economical manner; and that it becomes and is the duty of said Plaintiff, pursuant to said obligation thus imposed by the Interstate Commerce Act, to apply the scale of wages and compensation fixed by the Federal Government through the instrumentality of the United States Railroad Labor Board. That the Defendants, and each [fol. 14] and all of them, have conspired and are now conspiring, and in furtherance of said conspiracy are adopting and propose in the future to adopt unlawful and illegal means to prevent Plaintiff from carrying on its business as an interstate carrier, and are attempting, through said unlawful conspiracy executed by unlawful acts and conduct upon the part of the Defendants, and each of them to prevent Plaintiff from applying the scale of compensation prescribed by the United States Railroad Labor Board, and through said means are attempting to coerce Plaintiff into a scale of compensation other and different from that prescribed by the said United States Labor Board, pursuant to its lawful authority, which scale of wages was effective as of July 1, 1922.

12. Plaintiff further shows that it has at all times complied with all the decisions of the United States Railroad Labor Board and with

all the provisions and stipulations of its agreements and contracts with itf employes, including those of the class to which the Defendants in this action belong, and is now ready and willing to and will comply with all orders of said Railroad Labor Board and all the provisions of law relating thereto.

13. Plaintiff further alleges that the Defendants and the labor organizations named in this Petition, federated and conspired together on and prior to the 29th day of June, 1922, and pursuant to said conspiracy have since said time used the means hereinafter alleged, among others, pursuant to said conspiracy, looking to the interference with and obstruction of the Plaintiff's business as a common carrier and the coercion of Plaintiff into a scale of compensation other and difference from that fixed by the United States Labor Board. That on the 29th day of June, 1922, pursuant to said conspiracy, instructions were issued by the general officers of the said labor organizations directed to all subordinate officers of their respective labor unions, directing that on the first day of July, 1922, at ten A. M. all employes of Plaintiff, members of the organizations hereinabove mentioned, should cease their employment and should leave the service of Plaintiff in a body, such action being commonly known as a "strike." That said orders is-ued by said [fol. 15] Labor organizations calling a strike were a part of an unlawful conspiracy in which each and all of the Defendants herein have participated and are now participating to prevent the movement of traffic on the line of Plaintiff, and to deprive the Plaintiff of the service of its employes, and to make it impossible for Plaintiff to secure other employes and to thus demoralize, interrupt, and if possible, destroy Plaintiff's business as a common carrier of persons and property.

14. That as a result of said strike order on the 29th day of June, 1922, a large number of employes of Plaintiff, members of the Labor organizations aforesaid and others, left their said employment at one and the same time and in concert, in defiance of the orders of the United States Railroad Labor Board, in violation of the Statutes of the United States prohibiting conspiracies in restraint of interstate commerce, and for the purpose and intent of deliberately interrupting, interfering with, and obstructing traffic upon the lines of Plaintiff carrier, all to the great and irreparable damage and injury of Plaintiff, and for all of which Plaintiff has no remedy at law.

15. Plaintiff further shows that the conspiracy hereinbefore referred to and described was and is a conspiracy entered into not only for the purpose of interrupting and destroying commerce, upon the railway lines of Plaintiff but that such conspiracy was entered into and is now being carried out not only for the purpose of preventing Plaintiff from operating its Railroad but for the purpose of forcing all the railroads of the United States to disobey the order and decision of the United States Railroad Labor Board, and to pay a scale of compensation in excess of the wages fixed by the said Labor Board, and to this end said Defendants, operating pursuant to said conspiracy,

are now engaged in unlawful conduct, as will be hereinafter described, looking to the cessation of transportation upon the lines of Plaintiff and all other railroads in the United States, which, if accomplished, will destroy the business of Plaintiff as a common carrier and will paralyze and destroy the business of all industries in the United States, thereby depriving the inhabitants of the United States of the use of its railroads as a transportation system and entailing [fol. 16] untold suffering upon the people of the United States—all to the end and for the purpose of compelling Plaintiff, in common with all other railroads of the United States, to disobey the orders and decisions of the United States Railroad Labor Board, and to pay a scale of compensation to the Defendants and the other members of the unions and labor organizations to which Defendants belong in excess of the lawful scale of such wages and compensation as prescribed by the decision of the United States Railroad Labor Board, effective July 1st, 1922.

16. Plaintiff further alleges that pursuant to the said combination and conspiracy as hereinbefore set out, and in compliance with said strike order, large numbers of Plaintiff's employes, members of the organizations commonly known as the "Federated Shop Crafts," being the organizations named and described herein, refused and ceased to perform their several duties on the first day of July, 1922, and since that time large numbers of said employes, members of said unions, whose labor is essential to the proper operation of Plaintiff's railroad, have gone upon a strike as aforesaid, well knowing that by so doing they would cripple, interfere with and to a large degree prevent the Plaintiff, as well as other railroads in the United States, from the performance of its and their duties and obligations under the laws of the several states and the Federal Government in the prosecution of their business as common carriers. That the said unlawful conspiracy thus promulgated and now being prosecuted by each and all of the Defendants, has not been and is not now for the purpose of terminating the relating of employer and employe as between Plaintiff and said Defendants, but has been and is for the purpose of coercing and compelling the Plaintiff, as well as all other railroads in the United States, to continue the said Defendants as employes upon terms and conditions satisfactory to said Defendants, regardless of the ability of the Plaintiff to pay or meet their terms and conditions, and in violation of a decision duly and lawfully made and entered by the United States Railroad Labor Board.

17. Plaintiff further alleges that as a common carrier engaged in the transportation of passengers and property wholly by railroad [fol. 17] from one state of the United States to other States, it is subject to the provisions and requirements of the Act of Congress approved February 4, 1887, known as the "Interstate Commerce Act" and the several amendments and additions thereto, and was, is and at all times hereinafter mentioned has been subject to each and all of the laws of the United States relating to interstate transportation of passengers and freight, or relating in anyway to the conduct of

interstate commerce and business and to the transportation of the mails of the United States; that by said Interstate Commerce Act it is, among other things required, to provide and furnish cars and other vehicles and instrumentalities and facilities of shipment for carriage and all services in connection with the receipt, delivery, carriage and handling of property to be transported upon reasonable requests therefor, and to establish through routes and to provide reasonable facilities for operating them; that in the discharge of said duties, Plaintiff is obliged to employ continuously in its train service a large number of engineers, conductors, trainmen, switchmen, and the like, as hereinbefore averred; that it is a part of the said combination and conspiracy to prevent Plaintiff from the performance of its said duties, and by the acts and doings of the Defendants and said other striking employes hereinafter more fully described, the said Defendants are by force and intimidation seeking to prevent Plaintiff from the performance of such duties.

That in and by Section 10 of the said Interstate Commerce Act it is in substance provided that any common carrier or any agent or person acting for or employed by such carrier who alone or with any other corporation, company, person or party shall willingly do or cause to be done or shall willfully omit or fail to do any act, matter or thing in that respect required to be done, or shall aid or abet such permission or failure, shall be guilty of a misdemeanor and plaintiff avers that under such requirement it and its said officers and agents are bound to the performance of the duties prescribed by the said Act, or be subject to the penalties thereby imposed, and that one of the purposes of the said unlawful acts and doings of the defendants is to force upon the plaintiff an acceptance of their unlawful demands by preventing it from the performance of its duties by the said Act under the penalties imposed.

[fol. 18] 18. Plaintiff further avers that said defendants, in pursuance of the said combination and conspiracy, all as hereinbefore described, are themselves, and through their agents and representatives, endeavoring by threats, display of numbers, jeers and undue persuasion, to entice and force other employees of plaintiff, and of said other railroads, who desire to continue in the performance of their duties and to carry out their contracts of employment with plaintiff, and said other railroads, to abandon their several duties; that among other means practiced to carry out said combination and conspiracy, the defendants, their agents and associates in said combination and conspiracy, by means of letters addressed to employes remaining at work, and by other divers means, represent that it is the wish of the said labor organizations that said employes shall join in the strike now in progress and threaten bodily and other harm to them and their families in case they remain at work; that employes desiring to perform their contracts with plaintiff and to comply with the decisions of the United States Railroad Labor Board, are met upon the streets and in the vicinity of the shops, yards, tracks, stations and property of the plaintiff by the defendants, their agents and employes and by sympathizers with said de-

fendants, who by threats and other unlawful acts attempt to coerce said employes desiring to remain in the service, whereby and through such acts those employes formerly remaining at work are now leaving the service of plaintiff, and said other railroad companies, on account of fear of bodily injury and difficulty and danger to them of continuing in such service; that the defendants, either in person or through others acting with their knowledge and collusion or acquiescence, together with sundry other persons who are their associates and confederates, have constantly, in large numbers, hung about the shops, yards, tracks, stations and property of the plaintiff and upon the streets and in close proximity thereto, for the purpose of putting the plaintiff's employes in fear of bodily injury and to prevent other persons from entering its employ, and for the purpose of enticing and inducing the employes of the plaintiff to abandon the performance of their respective duties under their contract of employment with plaintiff, and the defendants, their agents and employes, have committed assaults upon employes of the plaintiff who were on their way to work in the shops, yards and tracks of the plaintiff and have inflicted such bodily injury [fol. 19] upon them as to prevent them from returning to work; that the defendants, their agents and employes, have by intimidation and threats, prevented persons about to go upon the premises of the plaintiff for the purpose of going to work, from going to the shops and yards of the plaintiff and have by said means prevented them from entering the employ of the plaintiff company and have thereby prevented the plaintiff from securing the necessary labor to perform the work which it is customarily carrying on at said places.

That as a result of the said unlawful acts of the defendants and their associates and sympathizers, the operation of the railway system of plaintiff is being adversely affected and the movement of freight and passenger traffic and the United States mail throughout their system is being interfered with and interrupted, and employes whose services have been engaged by the plaintiff to take the place of such striking former employes have been interfered with and prevented from performing their work pursuant to the contract of employment with the plaintiff, as hereinbefore set out, and that the said work is essential and necessary for the continued and uninterrupted operation of plaintiff's property as a transportation system engaged in both interstate and intrastate commerce.

19. Plaintiff further alleges that unless the defendants, their agents, associates and sympathizers, are restrained from interfering with employes of plaintiff desiring to work in its shops, the business of plaintiff, as hereinbefore alleged, will be seriously interrupted and its interstate traffic and carriage of United States mails interfered with for the reason that plaintiff cannot successfully prosecute its business without the operation of its mechanical department and a reasonable number of employes necessary therein. That employes cannot be secured and will not remain in the service of plaintiff in

its shops as mechanical employes when repeatedly and continuously met by the aforesaid threats and acts of violence and intimidation.

Plaintiff alleges that it is part of the unlawful combination and conspiracy herein to take advantage of such well known conditions and by calling and proclaiming a strike of all mechanics upon the system of plaintiff and all other railroads in the United States and by frightening away workmen willing to engage in the service of [fol. 20] the plaintiff, thereby to force upon plaintiff and said other railroad companies not a severance of the relations of employer and employe now existing between plaintiff and its said employes, and other railroad companies and their respective employes, but to force upon plaintiff a continuance of such relations under scales of compensation in violation of those prescribed by the United States Labor Board as hereinbefore referred to. That defendants, their agents, associates and sympathizers, all understanding the effect of the existence of a strike accompanied by violence, threats and intimidation, are using every means at their disposal to interfere with and interrupt the lawful and orderly prosecution of plaintiff's business as a common carrier, such means being those hereinbefore described; to-wit: that of picketing, patrolling, intimidation, threats of violence, both in personal conversation, meetings and by letter and by threatening to endanger the person, lives and property of the employes of plaintiff and those about to enter plaintiff's service. That at certain places along plaintiff's line of railroad in Wisconsin, groups of strikers, consisting of squads of men, have from time to time paraded before the entrances to plaintiff's shops and roundhouses.

That the defendants, their agents and sympathizers, have established and are maintaining a system of espionage against all acts of the plaintiff and its officers in attempting to employ and transport men to its shops and roundhouses to enter its service and upon discovering that plaintiff is attempting to place men in its roundhouses and shops who desire to enter into its employment and perform the necessary work which plaintiff has in its car and mechanical department; that thereupon the defendants and their sympathizers, agents and associates, for the purpose of carrying out their unlawful conspiracy hereinbefore described, resort to the shops, depot, and station grounds and premises of plaintiff in large numbers and inspect and intimidate all persons who they suspect to be persons about to enter the employ of the plaintiff, and importune and threaten them, so that it is practically impossible for the plaintiff to find a sufficient number of qualified men to enter its shops and perform the necessary work therein; that the defendants, their agents, associates and sympathizers, come to plaintiff's premises upon the right of way, tracks and station grounds and upon the streets in close proximity thereto, and undertake to persuade those about to enter the service of the plaintiff not to do so, and threaten such persons with violence, all for the purpose of intimidating and thereby pre- [fol. 21] venting the plaintiff from securing employes for the lawful and orderly prosecution of its business as an interstate carrier of persons, property and United States mail.

20. Plaintiff alleges and charges that it is the purpose and policy of the said defendants, by force and threats of violence to prevent the plaintiff from doing or having done the character of work which had been performed by the said employes so going upon said strike and members of said defendant organizations, and all for the purpose of preventing the plaintiff from performing its duty as a carrier of traffic, both state and interstate, in order that the plaintiff might be compelled to pay a scale of wages and adopt rules of work satisfactory to the defendants, contrary to the decisions of the United States Railroad Labor Board.

Forasmuch Therefore, as your plaintiff is without remedy save in a Court of Equity, and to the end that said defendants and each of them and all persons who may now or hereafter confederate with them, whose names are to your plaintiff unknown, and all persons, members of the said various labor organizations, associations and brotherhoods herein named, may be required to make full, complete and direct answer hereto, but not under oath, the answer under oath being hereby waived; the plaintiff prays that the said defendants, and each of them, and each and all of their attorneys, servants, agents, associates, members and employes, and all persons acting in aid or in conjunction with them, or any of them, may be enjoined and restrained, temporarily until final hearing, and perpetually thereafter, from in any manner interfering with, hindering, obstructing or stopping the business of the plaintiff, or its agents, servants or employes engaged in the maintenance, conduct or operation of its business; from preventing or attempting to prevent any person or persons from freely entering into or continuing in plaintiff's service, or from in any manner agreeing or combining or conspiring together to injure or destroy, hinder or interfere with or obstruct the business of the Plaintiff, its officers, agents or employes; from compelling or inducing or attempting to compel or induce, by use of threats, intimidation, violence, fraud or deception any person now in the employ of the plaintiff to cease performance of his or their duties or to fail to enter or continue in [fol. 22] its service; from directing or permitting any other person or persons under the control of the said defendants to interfere with or prevent by threats, intimidation, fraud or violence any person from entering or continuing in the employ of plaintiff; from in any manner hindering, obstructing or interfering with plaintiff's employes in going to or from their work; from commanding, directing, or inducing any of plaintiff's employes in going to or from their work; from commanding, directing, or inducing any of plaintiff's employes, singly or en masse, to cease to perform their several duties as such employes; from inducing, persuading or directing the employes of plaintiff to cease or fail to perform and carry out their respective contracts of employment; from knowingly enticing such employes, present or future, to leave plaintiff's service without its consent; from trespassing or entering upon the grounds or premises of plaintiff for the purpose of interfering therewith or of hindering or obstructing its business, or for the purpose of compelling or inducing by threats or intimidation, violent or abusive language, or

undue persuasion any of plaintiff's employes to refuse or fail to perform their duties as such, and from compelling or inducing or attempting to compel or induce, by threats or intimidations, or abusive or violent language, any of plaintiff's employes to leave its service, or to fail or refuse to perform their duties as such employes; from compelling or attempting to compel by like cause or causes any person desiring to seek employment with the plaintiff from so accepting the employment; from ordering, directing, aiding, counseling, assist*ant*ing or abetting any other person or persons, company or organizations to do or cause to be done any of the things aforesaid; from engaging in the practice commonly known as "picketing," that is to say, from assembling or causing to be assembled numbers of men in sympathy with the said strike upon or in proximity to the property of plaintiff where its present employes are required to work, from patrolling the premises of the plaintiff, and from accosting employes as they go in and out of their respective places of work and by threats, undue persuasion or otherwise, attempting to persuade, intimidate or prevent said employes from entering upon their duties, or continuing there, or from ordering, directing, aiding or assisting in any way, or in any way abetting any person in committing the said unlawful acts; from congregating upon or maintaining at or near any of the yards, shops, depots, terminals, tracks, waylands, roadbeds, or premises of the plain-[fol. 23] tiff, any guard, pickets, or persons to perform any act of guarding, patrolling or picketing any of such yards, shops, depots, terminals, tracks, waylands, or premises, from threatening in person or by telephone, or in any manner intimidating or making suggestions of danger or threats of violence of any kind to any servants or employes of plaintiff or persons desiring to enter its service or employment; from in any manner combining or conspiring, commanding or directing the doing by any person of any injury or bodily harm to any of the servants, agents or employes of plaintiff, or to any persons desiring to seek employment with the plaintiff; from frequenting or going to places of residence of the employes of the plaintiff for the purpose of intimidating, coercing or threatening such employes, or in any manner by violence, intimidation or threats, or putting them in the fear or suggestion of danger to induce them to leave the service of plaintiff or to refuse to perform their duties for the plaintiff, or to refuse to enter the service of the plaintiff; from in any manner hindering, obstructing or impeding the operation of the trains of the plaintiff, or the movement of freight and passenger traffic, and the United States mails, or performing or discharging other duties as a carrier; from endeavoring illegally to induce persons not to deal with the plaintiff, its agents or employes, or from in any manner injuring or destroying the property of the plaintiff, or by any such means aforesaid hindering, obstructing or interfering with its business as a carrier of interstate commerce; and from ordering, directing, aiding, counseling, assisting or abetting any person, association, or organization to do or cause to be done any of the things aforesaid until the further order of this Court, and that the plaintiff may have such other relief

in the premises as the nature of the case may require and to your Honor shall seem meet.

May It Please Your Honor to grant the plaintiff, not only a writ of injunction, conformable to the prayer, but also a writ of subpœna of the United States of America, directed to the said defendants, and each of the-, commanding them on a day certain to appear and answer this Petition, and to abide by and perform such orders and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

And Further that a temporary restraining order may be issued restraining the said defendants and each of them in accordance with [fol. 24] the Prayer for a preliminary and perpetual injunction, pending the hearing on said application for a preliminary injunction; that said temporary restraining order may be served on each of said defendants named and that as to those unknown and unnamed the same may be ordered and decreed by this Court to be and become effective and binding upon the publication of the same in one or more public newspapers to be designated in the order of this Court, published on the lines of plaintiff's railroads, and upon and after the posting of a copy of the same at one or more depots or stations on said line of railroad, as may be designated by this Court; that the Marshal of this Court be directed immediately to publish and post notices of said injunction and restraining order; that he be authorized and directed especially to commission a sufficent number of deputy marshals to make said order in all respects promptly effective and to continue the same in effect until the further order of this Court.

Chicago, St. Paul, Minneapolis and Omaha Railway Company, by Powell & Sprowls, Its Attorneys.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WISCONSIN

[Title omitted]

ANSWER—Filed Aug. 18, 1922

Now comes the defendants, and each of them, and for answer to the Bill of Complaint of the plaintiff herein:

1. Admit the allegations contained in Paragraph One of the said Bill of Complaint.

2. Admit the allegations contained in Paragraph Two of the said Bill of Complaint.

3. Admit that the suit is one of a civil nature arising under the constitution and laws of the United States, but deny any knowledge or information sufficient to form a belief as to the amount in con- [fol. 25] troversy and hence puts the plaintiff to its proof in that

regard, and deny the existence of any unlawful conspiracy or wrongful or illegal acts on the part of these defendants.

4. Admit that the officers named in Paragraph Four of the said Bill of Complaint are so correctly named and designated and connected as stated with the different organizations mentioned in the said paragraph, but deny that the said officers of the said organizations therein named control the conduct and action of the members of each of the said organizations, and deny the existence of any illegal conspiracy or combination on the part of these defendants, and deny that they or any of them threatened and conspired to do any of the unlawful acts and things described in the said bill of complaint.

5. Admit the allegations contained in Paragraph Five of the said Bill of Complaint.

6. Admit the allegations contained in Paragraph Six of the said Bill of Complaint.

7. Admit the allegations contained in Paragraph Seven of the said Bill of Complaint.

8. Admit the allegations contained in Paragraph Eight of the said Bill of Complaint.

9. Admit that the plaintiff's duty and right to engage in and carry on the business of a common carrier for hire in interstate and intrastate commerce constitutes and is in and of itself a corporation right, but deny that the said right is now being seriously interfered with by these defendants, or any of them, and deny that the said plaintiff is suffering or will suffer irreparable injury on account of any acts committed by the said defendants, or any of them; deny that there is no adequate remedy at law, and allege that the defendants have committed no acts against the said plaintiff tending to result in the destruction of, interference with, or interruption of plaintiff's business, to the damage of the plaintiff in any sum whatsoever.

10. Deny that these defendants are affected in any way by the provisions of the Act of Congress commonly known as the Sherman Act, and also by the provisions of Section 16 of the Act commonly known as the Clayton Act, and deny that the defendants, or any of them have entered into a conspiracy for any of the purposes alleged in the said Bill of Complaint, and deny that they are adopting any unlawful means to prevent the plaintiff from employing men to work in its shops, yards, round-houses or terminals, or to interfere with [fol. 26] the operation of the business of the plaintiff in any degree whatsoever.

11. Admit the allegations contained in Paragraph Eleven of the said Bill of Complaint relating to the decision of the United States Railroad Labor Board by which the said Board prescribed, effective July 1st, 1922, a scale of wages for the different classes of employees to which the different defendants belong, but deny that the said defendants, or any of them, are unlawfully conspiring or taking any unlawful action or indulging in any unlawful conduct to prevent the

plaintiff from applying the scale of compensation prescribed by the United States Railroad Labor Board by the terms of its said decision, or that they are attempting to coerce the plaintiff in any manner whatsoever.

12. Further answering the said Bill of Complaint, the defendants and each of them allege that they are without any knowledge or information sufficient to form a belief as to whether or not the plaintiff has at all times complied with all of the decisions of the United States Railway Labor Board, as alleged in Paragraph Twelve of the said Bill of Complaint, and puts the plaintiff to its proof in that regard.

13. Deny that the calling of the strike referred to in Paragraph Thirteen of the said Bill of Complaint is an unlawful conspiracy on the part of these defendants or the respective labor organizations to which they belong, or that the defendants or the respective labor organizations to which they belong are unlawfully preventing a movement of traffic or in any way interfering with the business of the plaintiff.

14. Admit that on the 1st day of July, 1922, the defendants left the employ of the plaintiff at one and the same time and in concert, pursuant to the strike order alleged, but deny that the leaving of the employment of the plaintiff by these defendants, and the members of their respective labor organizations, at the same time and in concert, was illegal and in the nature of an unlawful conspiracy, and allege that the said defendants, and each of them, and the members of the respective labor organizations, were within their lawful rights in so leaving the employment of the plaintiff in concert.

15. Deny the allegations contained in Paragraph Fifteen of the said Bill of Complaint.

16. Admit that the defendants and large numbers of the plaintiff's employees, members of the organizations commonly known as the [fol. 27] Federated Shop Crafts, refused and ceased to perform their several duties while in the employ of the plaintiff on the 1st day of July, 1922, but deny that the said refusal to work and cessation of employment is an unlawful conspiracy.

17. Deny that the defendants, or any of them, are seeking by force or intimidation to prevent the plaintiff from the performance of its duties as alleged in Paragraph Seventeen of the said Bill of Complaint.

18. Further answering the said Bill of Complaint, the defendants and each of them admit that certain of the defendants, singly and in concert, have congregated upon the streets in close proximity to the yards and shops of the plaintiff, but allege that they so congregated for the purpose of recommending, advising or persuading others by peaceful means to terminate their relation of employment with the plaintiff, and that certain of the defendants have attended at various places in a lawful and orderly manner for the purpose of furthering their interest as members of the said labor organizations

and as individuals. Defendants further allege that they are without sufficient knowledge or information to form a belief as to whether or not the railway system of the plaintiff is being adversely affected by their cessation of employment, but allege that if such be the case, it is not the result of any unlawful acts on the part of the defendants, their associates or sympathizers.

19. Further answering the said Bill of Complaint of the plaintiff herein, the defendants deny that they, or any of them, have been interfering with the employees of the plaintiff or with the plaintiff's business, or that they, or any of them, have been doing any unlawful picketing or have been guilty of intimidation or threats of violence at Superior, Wisconsin, or any other place within the said Western District of Wisconsin, as alleged in the said Bill of Complaint, or that they have maintained a system of espionage against the plaintiff, its officers, employees and yards, terminals and shops.

20. Further answering the said Bill of Complaint of the plaintiff herein, the defendants, and each of them, deny each and every allegation in the said Bill of Complaint contained not expressly admitted or qualified herein.

21. Further answering the said Bill of Complaint of the plaintiff herein, defendants allege that at no time since the strike order mentioned in the complaint went into effect has there been any unlawful picketing or intimidation or threats indulged in by these de- [fol. 28] fendants, and that they have in no way conspired to obstruct the usual conduct of the business of the plaintiff, and that, upon information and belief, there has existed no such conditions as alleged in the said bill of complaint, or as would warrant the continuance in force of the preliminary restraining order granted the plaintiff upon the filing of the said bill of complaint and accompanying affidavits; that, upon information and belief, defendants aver that plaintiff procured the preliminary restraining order herein solely for the purpose of prejudicing the public against the cause of the defendants and the respective striking crafts or unions to which they belong.

22. Further answering the said Bill of Complaint, defendants allege that certain of them, and other members of the crafts or labor unions to which they belong, singly, and in small numbers, have congregated in the public streets of the city of Superior, and in public places in the said city, in proximity to the yards, shops and terminals of the plaintiff, and that they have recommended, advised and persuaded employees of the plaintiff to cease to perform any work or labor for the plaintiff, and that this was done in a peaceable manner; that they have attended at such places where they might lawfully be, both singly and in small numbers, for the purpose of peacefully obtaining or communicating information, and peacefully persuading employees to abstain from work and prospective employees to refrain from work.

23. Further answering the said Bill of Complaint, defendants allege that in order to preserve their lawful rights, it is necessary for

a number of representatives of the different crafts to which they respectively belong, to engage, singly and in sufficient numbers, in recommending, advising and persuading employees of the plaintiff to cease to perform work or labor for the plaintiff, and to persuade and recommend prospective employees from engaging in work for the plaintiff, and for the purpose of communicating and obtaining information for the reason that only members of the respective crafts are able to tell who of their number have remained in the service of the plaintiff, and what craft or line of work or trade prospective employees are seeking to engage in.

Wherefore, Defendants pray the Court that the Bill of Complaint of plaintiff herein be dismissed, and that the defendants have their costs and disbursements; and failing this, that if a temporary restraining order issue, the same be so worded that the rights and privileges [fol. 29] of the defendants guaranteed them by the constitution and laws of the United States, be protected, especially with reference to their rights of peaceable assemply, freedom of speech, and peacefully persuading present employees of the plaintiff and prospective employees of the plaintiff, to refrain and abstain from working for the plaintiff, in view of the strike order mentioned in the said Bill of Complaint, and that they, and the organizations to which they belong, may go where present employees or prospective employees may be in sufficient numbers representing each craft or labor organization, for the purpose of peacefully imparting information to such employees, present or prosepective, and using peaceable persuasion or entreaty, such numbers, however, not to exceed the number of persons to be so addressed at any single place.

Cadigan & Cadigan, Solicitors for the Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUBPŒNA

The President of the United States of America to the Defendants and each of them, Greetings:

You are hereby commanded to appear before the Judge of the District Court of the United States of America, for the Western District of Wisconsin, to answer a bill of complaint exhibited against you in said Court in a suit in equity by the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation, plaintiff, and to further do and receive what the said Court shall have considered in this behalf and this you are not to omit on the penalty on you and each of you of Two Hundred Fifty ($250.00) Dollars.

Witness the Honorable Claude Z. Luse, Judge of the District Court of the United States, for the Western District of Wisconsin, at the

City of Superior, on the twentieth day of July, 1922, and of the Independence of the United States the one hundred forty-seventh.

William H. Comerford, Clerk. H. E. Ticknor, Deputy. (Seal.) R. L. Kennedy, Powell & Sprowls, Solicitors for Plaintiff.

[fol. 30–32] IN UNITED STATES DISTRICT COURT

CLERK'S MEMORANDUM

The defendants and each of them above are required to file their answer or other defense in the above cause in the Clerk's office of this Court on or before the twentieth day after service hereto exclusive of the day of said service, otherwise the bill aforesaid may be taken pro confesso.

William H. Comerford, Clerk, by H. E. Ticknor, Deputy. (Seal.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN

[Title omitted]

TEMPORARY RESTRAINING ORDER OF JULY 20, 1922

[fol. 33] Restraining Order

To each of the Above-named defendants respectively and to all other persons affiliated, acting, combining, conspiring, agreeing or co-operating with them:

Whereas, In the above named cause it has been made to appear on verified bill of complaint filed herein, which was on this 20th day of July, 1922, presented to the Honorable Claude Z. Luse, Judge of the United States District Court, for the Western District of Wisconsin, that a restraining order preliminary to hearing upon application for a preliminary injunction is proper because of the allegations thereof of immediate and irreparable injury, and that prima facie the plaintiff is entitled to an order restraining the defendants herein, and those affiliated, acting, co-operating, confederating, combining, conspiring, agreeing or arranging with them from doing the acts therein complained of and threatened to be committed,

Now therefore, On motion of the plaintiff it is ordered that the defendants appear before the District Court of the United States, for the Western District of Wisconsin, at a session thereof to be held in the court room in the City of Superior, State of Wisconsin, in said District, upon the 29th day of July, 1922, at ten o'clock in the forenoon of said day then and there to show cause, if any there may be, why the preliminary injunction prayed therein should not issue; and it appearing to the court that the injuries for the prevention of

which this restraining order in issued are injuries to, obstruction of, [fol. 34] and interference with plaintiff's business as a common carrier in interstate commerce, and as a carrier of the United States mails; that such injuries are irreparable because they cannot be compensated for in damages and may subject plaintiff to fines and forfeitures; that there is danger of such immediate and irreparable injury being caused the plaintiff before said application for a preliminary injunction can be heard unless said defendants are, pending said hearing, restrained as hereinafter set forth.

This restraining order is granted without notice because such injuries are liable to occur before a hearing upon notice can be had.

The plaintiff having executed a bond, approved by the Clerk of this court, in the penal sum of Five Thousand ($5,000.00) Dollars, securing the said defendants against all loss or damage which may result from the issuance of said order, if it should be finally determined that the same was improperly issued or that may be awarded to them by reason of the granting of said order,

It is ordered, That you, and each of you, the defendants herein named, and all other persons affiliated, acting, co-operating, confederating, combining, conspiring, agreeing or arranging with you, be restrained from in any manner interfering with, hindering, obstructing, or stopping the business of the plaintiff or its agents, servants, or employes in the maintenance; conduct or operation of its business; from preventing or attempting to prevent any person by threats, intimidation, force or violence from entering into or continuing in the plaintiff's service; from compelling or inducing or attempting to compel or induce by threats, intimidations, force, violence, fraud or deception, any person now in the employ of the plaintiff to cease performance of his duties or to fail or refuse to enter or continue in its service; from commanding or directing or permitting any person under the control of the said defendants or any of them to interfere with or prevent by threats, intimidations, fraud or violence any person from entering or continuing in the employment of the plaintiff; from in any manner or in any way whatsoever by the use of threats of personal injury or intimidation or suggestion of danger or threats of violence of any kind, hindering, obstructing or interfering with any person in the employ of the plaintiff in going to or from his work; from trespassing or entering upon the grounds or premises of plaintiff for the purpose of interfering therewith or hin- [fol. 35] dering or obstructing its business; from ordering, directing, aiding, counseling, assisting, or abetting any other person or persons, company or organization to do or cause to be done any of the things aforesaid; from engaging in the practice commonly known as picketing, that is to say, from assembling, or causing to be assembled men or women in sympathy with the said strike at points of ingress and egress to or from or at or near any of the yards, premises or shops of plaintiff or in proximity to plaintiff's property where its present employes are required to work, or on streets, alleys, paths or ways leading to and in the vicinity of the premises of the plaintiff, and accosting plaintiff's employes as they go in and out of their respective places of work, and by threats of personal injury, or intimidation, or

force, or violence, or by putting in fear, or by suggestion of danger, attempting to persuade or intimidate or prevent said employes from entering upon their duties, or continuing therein, or preventing any other person by like means from entering into the employ of the plaintiff; except that one single representative of all said defendants may be maintained at each of the points of ingress and egress to and from said premises now and ordinarily used or hereafter established by the plaintiff, but for the purpose only of announcing the strike and peaceably persuading the employes and would-be employes to join defendants in it; from ordering, directing, aiding, or assisting in any way, or in any way abetting any person in committing the said unlawful acts; from patrolling any such yards, shops, depots, terminals, tracks, way-lands or premises, from threatening, or in any manner intimidating, or making suggestions of danger or threats of violence of any kind to any servant or employes of plaintiff, or persons desiring to enter its service or employment, from in any manner combining or conspiring, commanding or directing the doing by any person of any injury or bodily harm to any of the servants, agents or employes of the plaintiff; from going singly or collectively to the homes, abodes, or places of residence of the servants or *or* employes of the plaintiff or telephoning or otherwise communicating with them for the purpose of intimidating, coercing, or threatening them in any manner by violence, intimidation, or threats or putting them in fear or by suggestion of danger to induce them to leave the service of the plaintiff or to refuse to perform their duties for the plaintiff, or to fail or refuse to enter the service of the plaintiff; from in any manner hindering, obstructing or impeding the operation of the trains of [fol. 36] plaintiff in their ingress or egress to or from the premises of the plaintiff; from in any way hindering, obstructing, or impeding the operation of the trains of plaintiff or the movement of freight and passenger traffic and United States mail, or performing or discharging other duties as a carrier; from in any manner destroying or injuring property of the plaintiff, or by any of such means aforesaid hindering, obstructing or interfering with the carrying on of its business of a carrier of interstate commerce; and from ordering, directing, aiding, counseling, assisting or abetting any person, company or organization to do or cause to be done any of the things aforesaid until the further order of the court.

It is further ordered, that the defendants in this action and all persons associating, combining or conspiring with them be and they are hereby ordered to absolutely desist and refrain from doing or attempting to do any of the acts so restrained, upon about or in proximity to the shops, roundhouses, depots, tracks, yards, or other premises of the complainant at Superior, Itasca, Hudson, Elroy, Spooner, Altoona, Ashland or Eau Claire in the Western District of Wisconsin.

And it is further ordered that a copy of this order certified under the hand of the Clerk in the seal of this Court be served upon each of the defendants to be restrained herein, and upon all other persons affiliated, acting, co-operating, confederating, combining, conspiring, agreeing, or arranging with them in said unlawful acts; that copies

of the writ issued hereon shall be posted in such manner as shall seem appropriate, and a copy published in such newspapers as may be deemed proper, and that this order shall be taken as binding upon all persons who have knowledge of the contents and purport hereof.

This order signed and issued this 20th day of July, 1922, at 2:30 o'clock P. M.

By the Court:

C. Z. Luse, Judge. (Seal.)

[fol. 37] IN UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT,
Western District of Wisconsin:

CERTIFICATE OF CLERK

I, William H. Comerford, Clerk of the District Court of the United States, for the Western District of Wisconsin, do hereby certify that the above and foregoing is a true and correct copy of the restraining order made and entered of record on July 20th, A. D. 1922, in the case of Chicago, St. Paul, Minneapolis & Omaha Railway Company, plaintiff vs. R. A. Henning, et al., defendants, as the same is now of record in the office of said Court.

Witness my hand and official seal at my office in the City of Superior, in said District, this 21st day of July, A. D. 1922.

William H. Comerford, Clerk, by H. E. Ticknor, Deputy. (Seal.)

IN UNITED STATES DISTRICT COURT

ORDER OF JULY 29TH CONTINUING PRELIMINARY RESTRAINING ORDER IN EFFECT TO AUGUST 8TH, 1922—Filed July 29, 1922

Now on this 29th day of July, A. D. 1922, at 10 o'clock A. M., being the time fixed by order of the court heretofore made for the hearing upon the granting of the preliminary injunction in the Powell & Sprowls, its attorneys, and each and every one of the deabove entitled action, and the plaintiff above named, appearing by fendants above named appearing by Cadigan & Cadigan, their attorneys, and the defendants by their counsel having requested a continuance of said hearing for a period of ten days, and the matter having been fully presented to the court, and good cause therefor having been shown, to-wit: the request of the defendants that they be given further time to prepare for said hearing, and the plaintiff having consented thereto,

It is ordered, that the temporary restraining order heretofore made and entered in this action on the 20th day of July, 1922,

shall be and the same is hereby continued in full force and effect [fol. 38] until and including the 8th day of August, 1922, at 10 o'clock, A. M., of which all parties being here represented in court shall take due notice.

It is further ordered, that the hearing on the order to show cause why a preliminary injunction shall not issue in this cause, shall come on for hearing before the District Court of the United States for the Western District of Wisconsin, at a session thereof to be held in the courtroom in the City of Superior, State of Wisconsin, in said District upon the 8th day of August, 1922, at 10 o'clock in the forenoon of said day, of which all parties hereto shall take due notice.

Dated July 29, 1922.

By the Court:

C. Z. Luse, Judge.

IN UNITED STATES DISTRICT COURT

AMENDMENT TO PETITION IN EQUITY—Filed July 29, 1922

Now comes the plaintiff above named and, with leave of the court first had and obtained, amends its original bill filed in this cause on the 20th day of July, 1922, by inserting in paragraph ten of said bill between the words "Hudson" and "Elroy" the words "Village of North Hudson" and state that the shops of the said Chicago, St. Paul, Minneapolis & Omaha Railway Company are located within the said Village of North Hudson, and re-affirm all the allegations of said original complaint, and hereby make the same applicable to the said properties of the said plaintiff, located at or in the Village of North Hudson, State of Wisconsin.

Wherefore, plaintiff prays that the temporary restraining order heretofore entered in said cause be amended to include the said properties of the plaintiff at North Hudson, and that it be made in all respects applicable thereto.

Chicago, St. Paul, Minneapolis & Omaha Railway Company,
by Powell & Sprowls, Its Attorneys.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

AMENDMENT TO RESTRAINING ORDER—Filed July 29, 1922

Now on this 29th day of July, 1922 a verified amendment to the bill of complaint in the above entitled action having been filed herein, and having been presented to the Honorable Claude Z. Luse,

Judge of the United States District Court for the Western District of Wisconsin, setting forth the fact that the said Bill of Complaint and Restraining Order as originally made, did not include the Village of North Hudson, Wisconsin.

Now, therefore, it is ordered, that the Original Restraining Order issued herein be and the same is hereby amended to include the shops, roundhouses, depots, tracts, yards and other premises of the complainant located at the Village of North Hudson, State of Wisconsin, and that the same acts forbidden, enjoined and retrained on the part of the defendants and all persons affiliated, acting, co-operating, confederating, conspiring, combining, agreeing or arranging with them, be and the same are hereby forbidden, enjoined and restrained at said place.

It is further ordered, That a copy of the Original Restraining Order, with a copy of this amendment attached thereto, be served upon the said defendants or any of them that may be found at the Village of North Hudson, Wisconsin, and that all of the defendants herein show cause on the 8th day of August, 1922 at 10 o'clock A. M. why a preliminary injunction should not be issued in accordance with the prayer of the complaint and amendment thereto.

This amended restraining order signed and issued this 29th day of July, 1922 at 2:30 o'clock P. M.

C. Z. Luse, Judge.

[File endorsement omitted.]

[fol. 40] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING RESTRAINING ORDER FOR 10 DAYS TO AUG. 18, 1922—Filed August 8, 1922

Now on this 8th day of August, A. D. 1922, at 10 o'clock A. M., being the time fixed by order of the court heretofore made on July 29, 1922, for the hearing upon the granting of a preliminary injuction in the above entitled action, and the plaintiff above named, appearing by Powell & Sprowls, its attorneys, and each and every one of the defendants above named, appearing by Cadigan & Cadigan, their attorneys, and the defendants, by their counsel, have requested a further continuance of said hearing for a period of ten days, and the matter having been fully presented to the court, and good cause therefor having been shown, to wit: the request of the defendants that they be granted further time to prepare for said hearing, and the plaintiff having consented thereto.

It is ordered that the temporary restraining order herein originally made and entered in this action on the 20th day of July, 1922, and continued in effect by order of the court made and entered on the 29th day of July, 1922, and as amended July 29th, 1922 shall be and the same is hereby continued in full force and effect until the

further order of this court, of which all parties being here represented in court shall take due notice.

It is further ordered, that the hearing on the order to show cause why a preliminary injunction shall not issue in this action, shall come on for hearing before the District Court of the United States, for the Western District of Wisconsin, at a session thereof to be held in the Courtroom in the City of Superior, State of Wisconsin, in said district, upon the 18th day of August, 1922, at 10 o'clock in the forenoon of said day, of which all parties hereto shall take due notice.

Dated August 8, 1922.

By the Court:

C. Z. Luse, Judge.

[File endorsement omitted.]

[fols. 41–43] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN

[Title omitted]

INJUNCTION—Filed Aug. 18, 1922

[fol. 44] The President of the United States of America to the above-named defendants, individually and as representatives of the members of the unions and organizations aforesaid, and to the members of each and all of said unions and organization aforesaid and to all persons combining, conspiring, agreeing, affiliating, acting or arranging with them or any of them and to all persons whomsoever, Greeting:

Whereas, at a hearing duly held on August 18th, 1922, in the City of Superior, Wisconsin, pursuant to an adjournment duly ordered, at which hearing the plaintiff and the defendants duly appeared, it was shown to the Court, and the Court having found:

That the plaintiff is engaged as a common carrier in the transportation of interstate commerce and of United States mails; that a strike now exists on the part of the said named defendants and the said labor unions represented by said defendants against the plaintiff; that this temporary injunction is necessary to prevent irreparable injury to the property and property rights of the plaintiff; that the injuries, for the prevention of which this temporary injunction is issued are injuries to and interference with plaintiff's business as a common carrier of interstate commerce and as a carrier of the United States mails; that such injuries are irreparable because they cannot be compensated for in damages and may subject plaintiff to fines and forfeitures; that plaintiff has no adequate

remedy at law, and that plaintiff is entitled to the issue of this injunction:

And the plaintiff having duly filed a duly approved bond in the penal sum of five thousand ($5,000) dollars, securing said defendants and such other persons as may be restrained by this injunction against all loss or damage which may result from the issue of this injunction, if it should finally be determined that this injunction was improperly issued;

Now, therefore, you, and each of you, are hereby strictly enjoined until the further order of the Court to absolutely desist and refrain from

[fol. 45] (1) In any manner interfering with the free use and occupation by plaintiff of any and all of its property or premises of every kind or character, and from interfering with, hindering, obstructing or stopping any of the business of plaintiff or its agents, officers and employes in the operation of plaintiff's railroad or any department or part thereof; and restraining them from such interference.

(2) In any manner whatsoever, by use of threats, personal injury suggestions of danger, of threats of violence of any kind, interfering with, hindering, obstructing or stopping any person engaged in the employ of the plaintiff, or any person desiring to enter its employment in connection with its business or the operation of its line of railroad in the Western District of Wisconsin.

(3) Inducing or attempting to induce or compel by threats, intimidation, force, or violence, or by the fear or suggestion of harm or danger, any person so employed or desiring such employment so as to cause them to refuse to perform any of their duties as employes, if employed, or to enter such employment, if they so desire.

(4) Interfering with the employes of said plaintiff in going to or from their daily work.

(5) Going to the homes of said plaintiff's employes, either singly or collectively, or any of them, for the purpose of intimidating them, or coercing any or all of them to leave the employment of the plaintiff, and from intimidating or threatening by letters, telephone, or in any manner, to wives, families or properties of said employes.

(6) Protecting, aiding or assisting any person or persons in committing any of said acts so restrained as aforesaid.

(7) Trespassing on the property of plaintiff.

(8) Assembling, loitering or congregating in or on any street, alley or path leading to and in the immediate vicinity of the shops, roundhouses, depots, tracks, office building or buildings, yards or any other premises of plaintiff at Superior, Itasca, Hudson, the Village of North Hudson, Elroy, Spooner, Altoona, Ashland, Eau Claire or elsewhere in the Western District of Wisconsin, for the

purpose of doing or attempting to do any of the acts so restrained or forbidden herein.

(9) Picketing or maintaining at or near the premises of the plaintiff or on or near the streets, alleys, paths, or roads leading [fol. 46] to the premises of the plaintiff, any representative or representatives, except that only one representative of all of said defendants may be maintained at each of the points of ingress and egress to said premises now and ordinarily used or hereafter established, but for the purpose only of announcing the strike and peaceably persuiding the employes and would-be employes to join defendants in it, those representatives not to be interfered with by plaintiff, or anyone acting for it, so long as such representatives are peaceful and law abiding.

(10) Doing any act or thing whatever in furtherance of any conspiracy or combination among them or any of them, to obstruct or interfere with plaintiff, its officers, agents or employes in the free and unrestrained control and operation of its railroad and the conduct of its business, and from defacing, tearing down, or in any manner or way mutilating any copies of any writs issued or posted hereunder.

(11) From posting or circulating in the immediate vicinity of plaintiff's property, or homes of plaintiff's employes, in any manner whatsoever, any written or printed notice which shall by name designate any employe of plaintiff as a "scab" or "strike breaker."

(12) By means of any handbills, banner or printed device, or by means of any noise or musical instrument of any character, causing or attempting to cause people to assemble in or about the home or place of abode of any employe of plaintiff for the purpose of intimidating such employe or holding such employe or his family up to scorn or ridicule.

(13) Using to or in reference to and in the presence of any employe of plaintiff, or the members of his family, any vile, abusive or obscene language, or any language likely to produce an assault.

This writ of temporary injunction, signed this 18th day of August, 1922, at 10 o'clock A. M., shall continue until further order of the Court herein and is and shall be binding upon all persons who have knowledge of the contents and purport hereof.

Hereof fail not under pain of penalty that will fall upon your failure to obey this injunction.

Witness the Honorable C. Z. Luse, Judge of the District Court of the United States, for the Western District of Wisconsin, and the seal of said Court, this 18th day of August, 1922. Issued at Superior, [fol. 47] Wisconsin the day and year last aforesaid.

William H. Comerford, Clerk, by H. E. Ticknor, Deputy.
(Seal of Court.)

Let the foregoing writ issue. C. Z. Luse, Judge. 10 A. M. Aug. 18, 1922.

UNITED STATES DISTRICT COURT

PETITION FOR RULE TO SHOW CAUSE, ETC.—Filed Aug. 18, 1922

In re Contempt of Court

To the Honorable C. Z. Luse, Judge of the United States District Court for the Western District of Wisconsin:

Comes now the complainant, Chicago, St. Paul, Minneapolis & Omaha Railway Company and files this petition herein, and states that the papers, files and proceedings in this cause show that on the 20th day of July, 1922, the said Chicago, St. Paul, Minneapolis & Omaha Railway Company filed in this court a bill in equity in which the said Railway Company was plaintiff and R. A. Henning, et al., were defendants, praying that an injunction issue against said defendants; that on the 20th day of July, 1922, as shown by the files, pleadings and proceedings in this cause, this court entered a temporary restraining order, which said restraining order is still in full force and effect, and has been at all times since said date.

That copies of said restraining order were duly published and posted and were personally served upon each and all of the named defendants in said action in the Western District of Wisconsin by the marshal or deputy marshal of this court, all prior to the date of the commission of the acts hereinafter referred to, as will more fully appear from the return of the United States marshal of this court on file in said cause, reference being hereby made thereto [fol. 48] and to all papers, files and proceedings in said equity cause.

Your petitioner further shows the court and alleges upon information and behalf that since the issuance and service of the said restraining order aforesaid, and with full knowledge thereof and in defiance of the terms of said order and in contempt of the authority of the court; that certain parties, to-wit: Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Mat. Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson and Walter Cronk, have willfully, wrongfully and deliberately disobeyed and violated the said temporary restraining order, all of which more fully appears from the affidavits of Albert Larson, and W. Y. Burton, which are hereto attached and marked Exhibits "A" and "B," and made a part hereof; that this application is made for the purpose of securing a rule against the parties above named to show cause why they should not be punished for contempt of this court, and for such further order in the premises as are just and proper.

Wherefore your petitioner prays that this court issue a rule against the said Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Nat. Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson and Walter Cronk requiring them to appear before this court and show cause why they should not be

committed for contempt and violation of the temporary restraining order as hereinbefore stated.

Chicago, St. Paul, Minneapolis & Omaha Railway Company, by Powell & Sprowls, Its Attorneys.

[File endorsement omitted.]

Jurat showing the foregoing was duly sworn to by John S. Sprowls omitted in printing.

[fol. 49] EXHIBIT "A" TO PETITION FOR RULE TO SHOW CAUSE—Filed Aug. 18, 1922

STATE OF WISCONSIN,
County of St. Croix, ss:

I, Albert Larson, being duly sworn, depose and say that I am employed as General Car Foreman by the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and am located at the car shops of said company, that since the serving and posting of temporary restraining order, there are at the points of entrance to shop grounds of said company a number of strikers presumably acting as pickets; that each afternoon at 4:30 large crowds of men, women and children assemble yelling and hooting at the employees as they leave and endeavor to intimidate employes of said company and induce them to refrain from work; that at 4:30 P. M. August 1, 1922, which is the time of closing work at said shops, there were at the main entrance gate of said shops approximately 50 men, women and children yelling and hooting, and that among said strikers was Clarence Michaelson, formerly employed by the Chicago, St. Paul, Minneapolis & Omaha Railway Company as an apprentice, and now out on strike, who called several of the employes as they left "Scabs," "Low down life scabs"; that about 9:40 A. M. August 2, 1922, about 40 or 50 strikers were assembled on the railway tracks entering the shop yards of said company among them were Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniel, Joe Richie, Matt Anderson, John Hagen and Arley Martin, all of whom were formerly [fol. 50] employed at the shops of said company, and are now out on strike, and that these strikers were assembled for the purpose of intimidating and preventing men, desirous of securing employment with said company, from entering upon such employment.

Albert Larson.

Subscribed and sworn to before me this third day of August, 1922. Lynn H. Ashley, Notary Public, County of St. Croix, Wisconsin. My commission expires Jan. 13, 1924. (Notarial Seal.)

EXHIBIT "B" TO PETITION FOR RULE TO SHOW CAUSE—Filed Aug. 18, 1922

STATE OF WISCONSIN,
County of St. Croix, ss:

I, W. Y. Burton, being duly sworn, depose and say that I am and have been for many years in the employ of the Chicago, St. Paul, Minneapolis & Omaha Railway Company as Foreman; that each day at 4:30 P. M. at the close of work when I and other employes of said company are leaving there are congregated at the main entrance gate to the shops from 50 to 60 men, women and children in violation of the temporary restraining order; that the strikers congregated there and wives of strikers are yelling and hooting and have on numerous occasions called me scab; that on the afternoon of August 1, 1922, when I was leaving the shops among the crowd congregated at the main entrance gate was Joe Peterson, formerly employed as an apprentice by said company and now out on strike, and who was wearing a star evidently having been appointed by the village of North Hudson as an officer, yelled "Dirty scab," and Clarence Michaelson, formerly in the employ of said company and now on strike standing there wearing the uniform of a U. S. soldier, yelled at me and other employes, "Dirty low life scabs," that as we passed the North Hunson school house, which is strike headquarters, Walter Cronk, for-
[fol. 51] merly employed by said company, and now on strike, yelled, "You are a fine looking bunch of scabs"; that each morning at about 7:00 A. M. there are congregated at the main entrance gate to said shops a large crowd of strikers, which I estimate at from 35 to 40, for the purpose of intimidating men desirous of obtaining employment in the shops of said company; that on the morning of July 27, 1922, as I was entering the main entrance gate to said shops at about 7:00 A. M. there was a large crowd of strikers congregated there and some one yelled, "Scab," and when I looked around to see who it was, they kept still and no one made a sound; that on the evening of August 2, 1922, at 6:30 P. M. I was at the Hudson Depot of the Chicago, St. Paul, Minneapolis & Omaha Railway Company on the arrival of its train No. 8 from the Twin Cities; that there was congregated at this depot a large crowd of strikers, which I estimate as being at least 20, walking along both sides of said train, watching everyone getting off the train, for the purpose of intimidating and stopping any person coming in on said train for the purpose of obtaining employment at the shops of said company.

W. Y. Burton.

Subscribed and sworn to before me this 2nd day of August, 1922. Lynn H. Ashley, Notary Public, County of St. Croix, Wisconsin. My commission expires January 13, 1924. (Notarial Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

RULE TO SHOW CAUSE—Filed Aug. 18, 1922

The President of the United States to Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Mat. Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson, and Walter Cronk, Greeting:

You are hereby cited and admonished to be and appear before our [fol. 52] District Court of the United States within and for the Western District of Wisconsin at the Courtroom in the Federal Building at Superior, Wisconsin, on the 25th day of August, 1922, at 10 o'clocck A. M., to show cause if any you know or have, why you, the said Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Mat. Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson and Walter Cronk should not be punished for contempt of court for disobeying and violating the temporary restraining order heretofore issued in this cause, and it is ordered that the Marshal of this district make legal services and due return of this rule on or before the apearance day above noted.

Witness the Honorable C. Z. Luse, Judge of said Court and the seal thereof this 18 day of August, 1922.

William H. Comerford, Clerk, by H. E. Ticknor, Deputy.
(Seal of Court.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION FOR CONTEMPT—Filed Aug. 18, 1922

Upon motion of the plaintiff it is ordered that a rule be issued on the defendants, Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Nat Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson and Walter Cronk to appear before this court at the court room in the Federal Building at Superior, Wisconsin, at 10 o'clock A. M. on the 25th day of August, 1922, to show cause why they should not be committed for contempt and violation of the temporary restraining order heretofore ordered and issued in this cause.

C. Z. Luse, Judge.

August 18th, 1922.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Sam Michealson, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order and that his denial is more fully set out in an affidavit which [fol. 54] is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Sam Michaelson; omitted in printing.

[File endorsement omitted.]

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Dan Cullen, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining [fol. 56] Order and that his denial is more fully set out in an affidavit which is hereto atached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing duly sworn to by Dan Cullen; omitted in printing.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Fred Henestra, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining [fol. 58] Order and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Fred Henestra omitted in printing.

[File endorsement omitted.]

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Ole North, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining [fol. 60] Order and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Ole North omitted in printing.

[File endorsement omitted.]

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Art Daniels, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order and that his denial is more fully set out in an affidavit which [fol. 62] is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Art Daniels omitted in printing.

[File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Joe Richie, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order and that his denial is more fully set out in an affidavit which [fol. 64] is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Joe Richie omitted in printing.

[File endorsement omitted.]

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Matt Anderson, in obedience to the Rule issued by this Court and says that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order [fol. 66] and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the Foregoing was duly sworn to by Matt Anderson omitted in printing.

[File endorsement omitted.]

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes John Hagen, in obedience to the Rule issued by this Court and says that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order [fol. 68] and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

John A. Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by John Hagen omitted in printing.

[File endorsement omitted.]

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Arley Martin, in obedience to the Rule issued by this Court and says that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order [fol. 70] and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Arley Martin omitted in printing.

[File endorsement omitted.]

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Clarence Michealson, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order [fol. 72] and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Clarance Michealson omitted in printing.

[File endorsement omitted.]

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

Bill of Exceptions—Filed Oct. 28, 1922

Before the Honorable C. Z. Luse, District Judge in and for the Western District of Wisconsin, Without a Jury, at Common Law

The plaintiffs in error, defendants below, were served with a rule to show cause why they, and each of them, should not be punished for contempt of court for alleged violations of a preliminary restraining order issuing out of the said court under date of July 20th, 1922, in a suit in equity commenced by the relator and described as Chicago, St. Paul, Minneapolis & Omaha Railway Company vs. R. A. Henning et al., said injunction or temporary restraining order issuing from the said court on the 20th day of July, 1922, and said rule to show cause being made returnable on August 25, 1922, 1922. The plaintiffs in error, defendants below, made separate answer and return to the said rule to show cause on the 25th day of August, 1922, and an issue having been raised by their answer and return and separate answers and returns and pleas of not guilty, the case duly came on to be tried. The relator appeared by Messrs. Powell & Sprowls and W. T. Faricy, its attorneys, and the defendants appeared by Cadigan & Cadigan, their attorneys. [fol. 74] In the course of the trial the attorneys and counsel for the defendants did take and allege sundry exceptions to the rulings of the court, which said exceptions are hereinafter set forth herein. The trial of this case was begun August 25th, 1922, and the case was tried by the court without a jury, and the following proceedings were had therein, and the parties, to maintain the issue on their part, introduced oral and documentary testimony in evidence as follows:

The Court: Are the accused in court?

Mr. Cadigan: The accused are here, your Honor, represented by counsel, all twelve.

The Court: Messrs. Cadigan & Cadigan represent all twelve. The plaintiff seems to be fully represented. Are the defendants prepared to make returns to the order?

Mr. Cadigan: We are, your Honor. We have prepared separate answers for each of these defendants, and I would like to file them for the reason we have attached affidavits on behalf of each defendant that we will need to use; I will file them now but I would like to use them in examining the defendants in case they take the stand. They are verified answers.

Mr. Sprowls: Have you copies of these, Mr. Cadigan?

Mr. Cadigan: No, we have not copies of them. They are all the same. Here is one (handing same to Mr. Sprowls). They are all the same, Judge (handing paper to the court).

Mr. Sprowls: If the court please, the affidavits and answers seem to raise the issues of fact, and the plaintiff is ready to proceed.

Mr. Cadigan: Before proceeding the defendants and each of them at this time move the court for a jury trial, on the ground that the case is fairly covered by section 22 of the Clayton Act.

Arguments were made by counsel for the respective parties.

The Court: The motion is denied. Proceed with the hearing.

To which ruling of the court the defendants then and there duly excepted.

Mr. Cadigan: Now at this time we would like to ask the court whether this is a trial for a civil or criminal contempt?

The Court: By what authority do you make such a request at this time?

Mr. Cadigan: I will withdraw it, and I move the court that, the defendants claiming this to be a case of criminal contempt, [fol. 75] ask that the case be prosecuted by the United States Attorney, and not by private counsel, and request it. I want an exception to the ruling of the court on that last motion.

Mr. Sprowls: I don't know as we have any objection to that. We have brought these matters to the attention of the court ourselves, and the plaintiff is not here claiming an exclusive right to prosecute these cases.

Mr. Farley: If the Court please, we are ready to prosecute the cases, ready to go ahead. We are likewise ready to let the United States District Attorney go ahead if he will prosecute them; but as the court knows the United States District Attorney has refused to prosecute. I do not understand that he has the exclusive right. I think his right to prosecute is concurrent with ours. Now, if this court can get the United States District Attorney to prosecute these cases we have no objection at all to turning over our proofs to him and having him prosecute them.

Mr. Cadigan: If the court please, the reason why I was anxious to determine whether or not in the opinion of the court this was a criminal contempt or civil contempt was just for the purpose of raising the question as to whether or not it was proper to have these men prosecuted for criminal contempt by private counsel. That was the only point in trying to ascertain that question.

The Court: Then your motion is that the court direct the United States Attorney to take charge of the prosecution?

Mr. Cadigan: That is it.

The Court: Based upon the claim that you make that it is a criminal contempt?

Mr. Cadigan: Yes.

The Court: Motion denied.

Mr. Cadigan: Exception.

To which ruling of the court the defendants then and there duly excepted.

The Court: I do not want to be understood as ruling finally, or ruling at all, that these prosecutions are not criminal contempt. I do not think that is essential to the determination of that motion.

Mr. Cadigan: Now, again before we proceed to trial the defendants seem to think that it will be necessary at this time to determine whether or not this is a civil or criminal contempt, under the provisions of section 22. Are we to understand now, Your Honor, that [fol. 76] the Court is not proceeding under section 22 of the Clayton Act, or is proceeding under section 22 of the Clayton Act?

The Court: Yes, we are proceeding under section 22.

Mr. Cadigan: Proceeding under section 22.

The Court: Well, now wait a minute. I spoke too hastily. Having determined that the acts charged here are not a violation of any state or federal statute, we are proceeding outside of the Clayton Act. That has no application, as I take it.

Mr. Sprowls: This was filed in our view as a proceeding in common law contempt, under the common law powers of the court.

The Court: I misspoke, and will change my answer there. Having determined that the facts charged do not constitute a violation of the state or federal statutes, the Clayton Act by its provisions does not apply.

Mr. Sprowls: Shall we proceed?

The Court: You may proceed. I do not know but what we are still possibly under some misunderstanding with regard to the application of the Clayton Act. The Clayton Act, some parts of it of course are general and apply to this class of cases.

Mr. Cadigan: Yes.

The Court: I understand your inquiry was directed——

Mr. Cadigan: To sections 21 and 22, directed to those two sections.

The Court: That is what my answer means, as to those two sections.

Mr. Cadigan: Yes.

Mr. Sprowls: The court is familiar with the complaint and affidavits attached, and I take it it is not necessary to read them at this time?

The Court: No, I think not.

Mr. Sprowls: The complainant offers in evidence the original restraining order issued in this cause by the court, together with the return of the marshal thereon.

Mr. Cadigan: I think we admit that in the answer.

Mr. Sprowls: You admit the service?

Mr. Cadigan: We admit the service.

Mr. Sprowls: Then if counsel consent, it will be admitted in the record that the defendants named are the members of the organizations referred to in the title of this case and the different unions therein named.

[fol. 77] The Court: And particularly those subdivisions of the general organization located at North Hudson.

Mr. Sprowls: Wisconsin, yes.

The Court: Is it so admitted, gentlemen?

Mr. Peter Cadigan: Yes, sir.

Mr. Sprowls: We offer in evidence the temporary restraining order and the return of service. Albert Larson, come forward and be sworn, please.

ALBERT LARSON, called as a witness on behalf of the relator, was duly sworn, and testified as follows:

Direct examination by Mr. Sprowls:

My name is Albert Larson; I live in Hudson, Wisconsin, and have lived there for 48 years. I am general foreman at the Hudson car shops of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and have been in its employ for something over 30 years, and general foreman about one year; before that I was assistant general car foreman, and prior to that foreman of the passengar car repair shops; I also occupied position of inspecting new car equipment for the road at different factories. I know practically all the men who were in the employ of the Omaha road at Hudson, Wisconsin, and those that are now out on strike; I know Sam Michaelson, have since we were little boys together; I know Dan Cullen for several years, and Fred Henstra for five or six years, and Ole North for over thirty years, and Art Daniels for eight years, and Joe Richie for five years; Matt Anderson for fifteen years; John Hagen, ten years; Arley Martin, four years; Clarence Michaelson a number of years; Joe Peterson a couple of years; Walter Kronk several years, and I have seen these men almost daily during all that time. There was a strike existing at Hudson on August 1st, 1922, the strike begun July 5th. During my work as general car foreman I made daily reports to my superior officers as to conditions existing in connection with the strike; it was part of my duty from the beginning of the strike up to August 1st to observe the actions of the men who were out on strike and make reports in reference to that fact. I recall leaving the shops about four thirty on the afternoon of August 1st, 1922; I went out to the big gate, the entrance there, and when the [fol. 78] men went home there was quite a number of men, women and children there hooting and hollering, and Clarence Michaelson was standing there and he was hollering "scab" and "low down scab." There were about forty people there, and the largest crowd was about forty or fifty feet from the gate, and some were six or seven feet away from the gate; I don't know who was the picket; there were three or four other men standing with Michaelson, or a short distance away from him; there was quite a space between this group of men where Michaelson was and the largest group, about forty feet.

On August 2nd, about nine forty, A. M. I saw a bunch of forty or fifty men down at the track entrance, which entrance is located south of the shops and is one of the points of ingress and egress from and to the shops; these men were former employes of the company and were on strike. Among them were Sam Michaelson, Fred Henstra, John Hagen, Clarence Michaelson, Ole North, Joe Richie, Art Daniels and Arley Martin, Dan Cullen. I made a report at the time and had their names typewritten when the matter was still fresh in my mind. Some of these men were on the roadway and some were on the railroad tracks and they were scattered some. There is no gate at this point, it is just an opening where the railroad tracks come into the shop yards, but there is a fence there that comes up pretty close to the tracks and that leaves an opening of about a

hundred and fifty feet. The nearest of this group were right at the track, right at the closing, there is a crossing there. The switch track coming out of the shop yards leads to the depot, and it is over this track that men coming in would be brought into the shop yards, and several of the men at present working come to work that way; all those that come from the direction of the depot use that place to go into the yard.

Cross-examination by Mr. Peter Cadigan:

There were quite a number of men on the crossing, right at the entrance to the shop yards; this crossing is on one of the streets of North Hudson and intersects the street, and in going from one portion of the town of North Hudson to the shops it is necessary to walk over that crossing; from the direction of Sam Michaelson's home going to the shops he would not cross that crossing. On August 1st at four thirty, P. M. I did not go out of the gate at that time but [fol. 79] stayed there, that is the main gate, until about five thirty. There was no crowd at the gate at five thirty, but at four thirty I saw a crowd of men, women and children about forty feet away from the main entrance. Among them Clarence Michaelson; he was about six feet away from the gate and wasn't with the crowd that was back forty feet. I did not recall any other of the defendants as having been with them; there were three or four other fellows with Michaelson close to the gate but I don't know who they were, I didn't pay any attention to them at all; they were not in conversation with Michaelson and I couldn't see whether they were with Michaelson or not; they were some of them shop men but I can't say who they were; the nearest man to Michaelson in the same group was two or three feet away from him; they were standing up; the other men were three to five or six feet away and Michaelson said nothing to me, or to any of the other men. The majority of the crowd that was standing far back was composed mostly of women and children; there was quite a number of men there too; all of them were hollering.

Some of the employes left at four thirty, but I did not leave until five thirty; I was at the gate when some men came out of the shop and stayed there during the time they passed out, and I heard Clarence Michaelson say something but didn't hear the other fellows say anything. Michaelson hollered at them and called them "scabs," "dirty low lived scabs" as they passed out. There were two or three automobile loads of men that passed out; about five in the first automobile; four in the second and I can't say how many in the third, probably three or four. I was watching Michaelson, the other men did not say anything. I can't remember whether any of the other defendants were there at that time.

On August 2nd at nine thirty, A. M. I was going down the railroad track from the shops, southwest, alongside the rails on a kind of path that had been used by the men for years; this is a trail three or four feet from the tracks, and just wide enough for one man to walk on. When I went down there there weren't very many

strikers there and I came within a block of the crossing; I had walked two or three hundred feet; I was going down after Mr. Thorne and he was going down to the depot; Mr. Thorne is the master carpenter. The depot is about half a mile from the shop. The men congregated when I came back; I saw Ole North and Matt Anderson when I [fol. 80] was going down but had no conversation with them. There were three of them together but I don't remember the third one; they were on the railroad crossing where the crossing crosses one of the streets of North Hudson; the crossing is about two blocks from the shops. Ole North or Matt Anderson said nothing to me or Mr. Thorne and did not try to intimidate either of us; they appeared to be minding their own business. Ole North and Matt Anderson were standing right on the railroad track where it crosses the street. I went on toward the depot with Mr. Thorne; I went down as far as one end of a railroad bridge that crosses over the river; I stopped down there and talked to Mr. Thorne and Mr. Thorne went to the depot and I came back up again; it was about a block and a half from the crossing to the bridge or about three blocks from the shop. Upon walking back toward the shop alone I saw a congregation of men, and they were all along the street right at the crossing. This street is not very much traveled but there are residences near the crossing; I don't know whether the defendants lived near there or not; this street leads down to a bathing beach used by the people in North Hudson. I came back alone and passed through the men and they said nothing to me; I was not intimidated; they did not ask me to stop working for the Omaha and they were about three hundred fifty feet away from the shop. Among these men I saw Sam Michaelson, the President of the village, and Joe Richie.

I knew that some of these men were specially appointed police officers of the village of North Hudson and have been informed that four of the men at the crossing were acting in their capacity as officers of the village of North Hudson; I don't know what their names were and I did not know that Matt Anderson was a policeman but I had seen Joe Peterson with a star on sometimes and knew that Arlev Martin was an officer. They were appointed since the strike and were former employes of the Omaha in the shop. I never saw any of these men talking to any of our present employes in the shops; I just came along there and I saw these men there and I made a report about it and that was all there was about it. The men working in the shops could not see these men there at the crossing because the shops are three hundred and fifty feet away and surrounded by a fence. I can't tell one specific instance when I saw any of these defendants talking to any of our employes or using threatening [fol. 81] language to them or trying to intimidate any employe in any way.

Redirect examination by Mr. Sprowls:

The men left their work in the shops about four thirty in the afternoon and that fact was generally known among the employes of the railroad company. I do not know if any of the officers that

I speak of who were officers of the village were officers before the strike began and believe that they were all appointed since then. I do not know what their functions were as officers of the village and I haven't seen them do anything. The path which I have mentioned is used by employes of the company in going in and out and is a well recognized and beaten path along the track.

Q. Now, on cross examination you stated that Mr. Thorn had that day gone down to the depot. Do you know why he was down

Mr. Peter Cadigan: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer yes or no.

To which ruling of the court the defendants then and there duly excepted.

Mr. Sprowls: Do you know the occasion of his going down there at that time?

A. Yes sir.

Q. What was the occasion of his going down there?

Mr. Peter Cadigan: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

To which ruling of the court the defendants then and there duly excepted.

Mr. Sprowls:

Q. State what the purpose of his going down there was.

A. He expected some men to come in.

Q. They were to come to the depot at Hudson, were they?

A. No, he expected some men to come in down at the depot from one of the trains.

Q. And if they had come in at that time they would have been brought in over this track, would they?

Mr. Peter Cadigan: Objected to as incompetent, irrelevant and immaterial.

A. Yes.

[fol. 82] The Court: The answer may stand.

To which ruling of the court the defendants then and there duly excepted.

This assemblage I have described was right a few feet away from the shops; there is a fence on each side of the opening, but they were directly next to the property of the Omaha railroad. The street crossing where the railroad crosses the street is a street that runs right along next to the fence of the Omaha property. Part of the track that crosses the street is inside of the shop grounds and part of it is outside and the men were assembled on the track and the street at the point where it immediately enters on the property of

the Omaha Railway Company. I am not a member of any of the Unions or organizations on a strike, and the strikers have never questioned my right to remain at work during the strike, because I was not called out by any organization to which I belong, and I have not been molested in going back and forth and in and out of the shop and the office.

Q. Do you know whether other men have been stopped in going in and out of those yards?

Mr. Peter Cadigan: Objected to as incompetent, irrelevant and immaterial. It should be limited to a certain time, and the dates charged in the information.

The Court: Overruled.

To which ruling of the court the defendants then and there duly excepted.

Mr. Sprowls: Do you understand the question?

A. Yes sir.

Q. Answer it, please.

A. I cannot recollect any names.

But I know that men have been stopped by assemblages just as the one described. On the morning of August 2nd when I was leaving the yards by way of the railroad track or that path I saw other men approaching that point the time I was going out, I should say probably fifteen or twenty coming in from all directions; they were coming toward the point where the tracks went into the shop yards; they were former shop men out on strike, and when I came back this crowd was there.

Recross-examination by Mr. Peter Cadigan:

Some men have been brought to work at the shops since the strike, [fol. 83] and on last Saturday night some were brought in cars over this track into the shops, but none previous to August 2nd. Ordinarily they were brought in via a bus line; some of the new employes were brought to the shops in cars previous to August 2nd but I don't know just what time, maybe a week before that, but they weren't brought in over any track and not on railroad cars. Previous to August 2nd I had no information that men were to be brought to the shops at North Hudson on that day, but on August 2nd, at nine thirty in the morning, I heard there was someone that was to come; this was just previous to the time I started after Mr. Thorn. The manner of bringing in these men is kept secret and I do not know whether any of the defendants had any information to the effect that men were to be brought in on that morning. There are about seven tracks running into the yard where the shops are located; switches start in a little below the crossing and then there are some switches above the crossing; this is the only track that leads directly into the shop; there is switches on both sides of the crossing but none in the street, and there are switches inside the yard, close to the shop. I heard that Sam Michaelson was President of the

village before the strike took place. When I was following Mr. Thorn down to the depot, among the men I saw coming toward the railroad crossing was Arley Martin; he was about two blocks away when I met him; Ole North and Sam Michaelson were on the crossing; I also met John Hagen coming up the railroad track about one hundred and fifty feet away from the crossing; he was going in the direction of the crossing. That is about all I can remember. Hagen was on the path alongside of the track. He did not accost me or say anything to me. This path has been used by railroad employes for a number of years.

Re-redirect examination by Mr. Sprowls:

When I started down there after Mr. Thorn I understood he was going to meet some men who were coming in to go to work. We had employed only ten or twelve new men in the shops up to the time this instance occurred; ten or twelve was all of the men that were employed at that time to take the place of the men who were on strike; there were about three hundred men on strike and we had ten or eleven at that time to take the place of three hundred.

[fol. 84] Re-recross-examination by Mr. Peter Cadigan:

Mr. Thorn told me that new men were coming in to take the strikers' places on August 2nd; I learned this about ten minutes from the time that he started up to the depot.

WILLIAM Y. BURTON, called as a witness on behalf of the plaintiff, was duly sworn, and testified as follows:

Direct examination by Mr. Sprowls:

My name is William Y. Burton; I live at Hudson, Wisconsin and I have lived there about forty-five years; I am employed by the Chicago, St. Paul, Minneapolis & Omaha Railway Company and have been in their employ a little over thirty-two years. I have been apprentice in the machine shop at St. Paul, switchman, painter, wood machinist and foreman; at the present time I am foreman of the mill. I was absent from 1916 to 1918, being in the National Guards, with which I was connected for about twenty-eight years; I have been a national guard from private to Lieutenant Colonel. I was a Major in 1916 and commissioned Lieutenant Colonel in June, 1917. In 1916 I was in San Antonio and was at Waco, Texas, in 1917 and 1918; I was also on the Mexican Border in a training camp. I am acquainted with the former employes of the company and worked at North Hudson, that is, a good many of them; the biggest part of them, but I don't know them all by name. I have known Joe Peterson for a couple of years; he worked for me for about six months; I know Clarence Michaelson; have known him quite a number of years; I have known Walter Cronk quite a number of

years. There is a strike on at the present time on the part of certain employes of the Omaha at Hudson, which has been effective since about the 1st of July; about three hundred of our employes went out on strike; among them Joe Peterson and Walter Cronk.

I generally quit work at the shops at North Hudson about four thirty in the evening, and quite a few other employes of the company quit work at the same time. I recall leaving the shop grounds on the 1st day of August, 1922, about four thirty in an automobile; I left by what is known as the main entrance that goes out on Fifth or Sixth Street, and at the entrance I recall seeing two persons; as [fol. 85] I was going out the gate in my automobile, there were three other foreman with me; just as I was going out the gate at a very slow rate of speed, about six or eight miles an hour, I heard someone yell, and I turned quick to my right; Clarence Michaelson was standing just outside the gate, not over a foot away from the running board of my automobile, and Joe Peterson was standing within two or three feet from him, both of them standing up facing us; I looked around and I say Clarence Michaelson throw out his fist and say, "You God damn dirty scab;" he shook his fist at me and at the same instant Joe Peterson said, "You dirty low lived scab;" Peterson had a star on; they were standing on the right hand side of the car going out of the gate. The strikers maintained a picket there at that time and I noticed a man on the left hand side of the gate, where ordinarily the picket is always located; they had one picket there right along and he usually occupied the position described. Michaelson and Peterson were both on the right hand side of the gate and in back of them I noticed some men; I did not notice who they were and can't say how many, possibly two or three; they were six or seven feet away from Peterson, and diagonally across from the gate, about fifty or seventy-five feet from the entrance, there was a large congregation of men women and children, I should estimate forty or fifty, and they hooted and hollered and yelled, but I paid no attention to them; I either had to turn to the left and go east and pass them or go straight out; I went straight out down Main Street, but if I turned to the left I would have to pass between them and the grounds of the shop; they stood diagonally on a corner on a private lot, just off the side walk, so instead of going the way I usually went and taking the street to the left in order to prevent passing them, I went on straight ahead one block south and then turned east. This all occurred on August 1st in the afternoon. At the time I left the shop yards I saw Mr. Albert Larson inside the fence at the entrance, right at the gate.

Q. Did you see in going in and out on a number of other occasions following that time this same assemblange near the gate of the yards?

A. Yes sir.

Mr. Peter Cadigan: Just a moment please. I should like to hear that question.

(Question read.)

Objected to as incompetent, irrelevant and immaterial.

[fol. 86] Mr. Sprowls: It seems to me it is material on the general question of intent.

The Court: What bearing has the intent of those that may have been across the street, a large assembly?

Mr. Faricy: I think the question probably should be limited to these particular defendants, your Honor, but if counsel wants to show or seeks to show that at other times and at this same place these defendants committed some acts, it seems to me that goes to the question of their intent in being there. Were they there but once the argument might be made that they were there rightfully, but if we show they were there a number of times this same way I think it goes to their intent.

The Court: The question is rather unfortunate on that theory.

(Question read.)

Mr. Sprowls: I will withdraw that.

At other times after the service of the restraining order, I saw Mr. Peterson in the vicinity of the entrance; I have seen him there almost every morning and night; he had a star on walking around and hollered "scab" at me on several different occasions.

Cross-examination by Mr. Peter Cadigan:

Previous to August 2nd, Peterson hollered "scab" at me on various occasions; he hollered "you scab," that is all; I can't give the dates; he did it after August 2nd but I can't give the dates; he did it on a good many occasions; on one particular occasion as we were going past his house, he stuck his head out of the window and roared "scab, scab" at us; there were three foreman with me; Andrew Johnson, Edwin Lomnes and Hans Lystad. The mill where I work manufactures all the wood work for the building of cars, and is in the same enclosure as the shops. On August 2nd at about four thirty o'clock, I was leaving the shops by the large gate—the main entrance—I don't know the name of the street that it opens into, but there are residences on the street; the gate is ten or twelve feet wide when it is open, and there is just a railing across the top of the gate, the railing being about twelve or fourteen feet high, and there are no railroad tracks going through that entrance; automobiles go in through this entrance gate and it is the main thoroughfare on the company's property. At four thirty on August 1st I [fol. 87] left the entrance in an automobile with Andrew Johnson, Edwin Lomnes and Hans Lystad, and in going out the first man I saw was the picket on the left of the entrance; I don't recall who he was; he said nothing and there was no one near him; but I heard somebody yelling and I turned quick to the right and I saw Clarence Michaelson going through the performance I mentioned; I heard him say, "You God damn dirty scab" once, that is all; he was shaking his fist; I should judge Clarence Michaelson is still a

minor; he wasn't over two or three feet away from Joe Peterson, and Joe Peterson yelled about the same time; I don't know who the two or three other men that were there, but they were standing six or seven feet away; I can't say whether they were with Peterson or not; I don't know whether Peterson was an officer or not, although I saw him with a star; I presume that he was; I have been informed that he was an officer; I saw Peterson there after August 2nd on another morning and he was with Joe Richie; [illegible] and Joe Richie were across the street with another man named Spielman, but they said nothing at that time; I saw Peterson nearly every morning and night as I went out; each night there has been a big crowd at the entrance, from forty to fifty, and Peterson was generally with this crowd; I don't know whether Peterson was there as an officer to quell any disturbance or not; the crowd was not on railroad property and did not have the road blocked or the passageway into the yards and I could have driven my automobile by the place where they were; the majority of the crowd consisted of women and children, and they were the ones that were doing most of the yelling.

Redirect examination by Mr. Sprowls:

Every night until the last few days there was a crowd of forty to fifty gathered there near the entrance and Peterson was there almost every time. On the afternoon of August 1st I recollect passing the Northwestern school house which is now being used as strike headquarters; I saw some men lying in the yard there as I passed and turned to go east; just as I turned my car east around a corner there were four or five men lying in the school yard and as I passed them Walter Cronk rose up and said "You are a fine bunch of looking scabs" but I kept on going. Cronk is a former employe now on strike.

[fol. 88] Recross-examination by Mr. Peter Cadigan:

The schoolhouse is one block south of the main entrance. Cronk was the only one that said anything and I do not know the names of the others as I paid no attention to them.

WILL TOUTON, called as a witness on behalf of the plaintiff, was duly sworn, and testified as follows:

Direct examination by Mr. Sprowls:

My name is William Touton; my occupation is United States Deputy Marshal and I reside at Madison; I have been a Marshal for six years and recall being sent to Hudson in August, 1922. I left Madison on August 3rd and arrived in Hudson on August 4th, being ordered there by the United States Marshal for investigation and guard duty; I stayed in Hudson till the evening of the 10th of August, I came to know some of the men who were former em-

ployes of the Omaha at Hudson and who were on strike; I recognize in the Court Room some of the men whom I had seen around the entrance to the shop yards at the time when I was in Hudson; among them Arley Martin and Joe Peterson, and I see a lot of other faces here that I have seen but I don't know their names; also Joe Richie. At the times that I saw these three men there were a number of men gathered there at the fence; they would generally gather right after the whistle blew at four thirty; these three men were all there on the night of August 4th when there were at least seventy-five men assembled.

Q. State if you know whether that was the hour on which the employes that were working in the shop quit their work?

A. I know when they assembled; I know the occasion they assembled for.

Mr. Sprowls: I did not mean to call for that answer.

Mr. Peter Cadigan: I move the answer be stricken out as not responsive.

The Court: Stricken out. Read the question.

(Question read.)

The men assembled at four thirty which was the hour that the employes that were working in the shop quit work.

[fol. 89] Cross-examination by Mr. Peter Cadigan:

On the occasion mentioned, on August 4th, there were no women or children among the seventy-five men. I have been informed that Martin and Peterson were police officers and knew that they were. This crowd was about seventy-five feet away from the entrance and across the street on the corner; they remained there until the employes left the shop and for some time after; I don't know whether any of the other defendants were in the crowd or not; Martin and Peterson both wore stars and there were other police officers there besides them; there were at least ten police officers in that crowd; Mr. Richie, a brother of the defendant, Joe Richie, is the village marshal and he was there also; Joe Richie was just in the crowd; the Sheriff of the county was with me that evening; there were no representatives of the United States Marshal's office at Hudson when I left.

Redirect examination by Mr. Sprowls:

These local officers did not lend me any assistance in preserving order at the time mentioned; at this present time I believe there are four United States Deputy Marshals at Hudson, but I am not positive; on the occasion of the assembly on the afternoon of August 4th nothing of any violence occurred; the crowd just stood there for about half an hour, that is, from four thirty until five o'clock; some employes went by at that time but no one in the crowd said anything and they did nothing; they were a very quiet crowd.

Recross-examination by Mr. Peter Cadigan:

I did not need any assistance from the local police officers and I did not request any.

Re-redirect examination by Mr. Sprowls:

At the time I was there on August 4th I told a number of men that I was United States Deputy Marshal and told them why I was there and what I intended to do, and quite a number of men in the crowd knew that.

[fol. 90] Re-recross-examination by Mr. Peter Cadigan:

There was nothing abusive said to me by any of the men on August 4.

Re-redirect examination by Mr. Sprowls:

Some one asked me what my credentials were but that was a different occasion; that was on about August 7th; a man named Monroe who was an officer and wore a star inquired of me. The village marshal told me that there were twenty-three officers besides himself, making twenty-four in all. The population of North Hudson is about seven hundred.

WILLIAM H. THORN, called as a witness on behalf of the plaintiff, was duly sworn, and testified as follows:

Direct examination by Mr. Sprowls:

I reside in Hudson and have lived there since 1915; I am master car builder for the Omaha Railway and I am the chief official in charge of the shops at Hudson. Albert Larson is my general foreman. North Hudson has a population of between seven and eight hundred inhabitants and has no industry outside of the railroad shops. Prior to the strike we had three hundred and twenty-eight employes, two hundred and twenty-five of which belonged to the six associations of shop crafts on strike, and all but eleven of these two hundred and twenty-five went out on strike; during the time I have been in charge I have become acquainted with a great many of the men now on strike; I know practically every man there by sight, but I could not call them all by name; I have known Sam Michaelson for thirty years; Dan Cullen for nine years; Fred Henstra for four or five years; Ole North for thirty years; Art Daniels for eight years; Matt Anderson for nine years; Arley Martin for four or five years; these men were all in the employ of the company until about the 1st of July 1922, and they are now out on strike. I left the shop grounds on the morning of August 2nd, 1922, having received a telephone message that some men got off the train that looked like workmen and had started toward the shop, and I went

down to see them to see if I could get them through the picket line in case they were shop men. Just prior to this time the picket line [fol. 91] had varied from three or four to forty or fifty at different times of the day; I went down the path along the track, it being a short direct road to the depot; the bulk of the men employed in the shop go out by what is called the main gate, but some use the road that I used and nearly all of us use it occasionally; it is between one half and three fourths of a mile from the railroad station at Hudson to the entrance to the shop grounds along this well beaten path; at this track entrance to the shop grounds where I went out there that morning, I saw Sam Michaelson and Ole North and other men approaching, and down the track leading toward the depot I saw Matt Anderson, Dan Cullen, Art Daniels and Fred Henstra; they were there at the crossing or approaching it at that time; they were coming from two directions, one from the main part of the village and two, I think, were coming from toward the depot; my recollection is there were three men standing on the tracks at the entrance and that the others were approaching; I met Arley Martin after I had passed the crossing and was going through the yard and he was going toward the crossing; I did not find the men that I was looking for at the depot and brought none back to the shops that morning; up to that time we had brought in very few to take the places of the men who were on strike. The shop grounds proper contains about forty acres, and it is enclosed, part of it with a high board fence and part of it with an ordinary wire fence; there are certain well defined points for going in and coming out of the enclosure, and the point where the railroad tracks lead into the property is one of them; the main entrance that is used by most of the employees is north and east of the track entrance; this one is used by automobiles and foot passengers.

I have been down at the entrance gate numerous times since the restraining order was served; the order was served on either the 21st of July or the 20th of July; I remember the United States Deputy Marshal serving the defendants and posting the copies. Since that time I have seen some of these defendants near the entrance to the shop grounds and in company with others; some times the crowd would vary from ten to fifty, and it was usually greatest between seven and seven thirty in the morning and four thirty in the afternoon, the hours when our present employes go to work and when they quit.

[fol. 92] Cross-examination by Mr. Peter Cadigan:

I am unable to state how many of the present employes have used the track entrance for obtaining ingress to and egress from the property; there was one that used it for a time; all employes have been going in through the main entrance, some by automobile and some on foot, and they do not use the track entrance, and before the strike order was served the entrance ordinarily used was the main gate, but there is quite a number that live in the lower part of the town that have always used the other entrance; the track entrance is from a hundred to a hundred and fifty feet wide and

has no gate, fence or obstruction of any kind; the shops themselves are between four and five hundred feet from the public street and that passes by there, and the fence surrounding the property is right on the edge of the street, and it was at this crossing that I saw Michaelson and Ole North standing on the morning of August 2nd at the intersection of the railroad crossing and the public street; Mr. Same Michaelson is president of the village; I also saw Anderson, Cullen, Daniels and Henstra, some coming up the track and some coming up the street; they were approaching in a scattered group and were not all together; Anderson and Martin were coming up the yard and the other two were coming up the street; there were others also that I do not recall. I had no information that morning that new employes were coming into Hudson that day, although I was expecting new men every day. Around about August the 2nd or 3rd there was very little importation of men to take the strikers' places, but I can't place any date in the neighborhood of August the 1st or 2nd when we were importing men to take the place of strikers, although we have had some brought in both before and after the dates mentioned; since the restraining orders were served about seventy-five or eighty men have taken the place of strikers and they gain access to the property in different ways; the new employes were not brought in through the track entrance but went through the regular gate entrance; we have not taken any men in through the track entrance. North Hudson is a separate municipality inhabited by employes of the Omaha Railroad who live there and reside there; nearly all of the residents of North Hudson are shop employes, and the only business establishments there of any size outside of the Omaha shops are two groceries, a meat market and a confectionery; the great portion of the male popu-[fol 93] lation is employed by the Omaha Railroad. On or about August 1st and 2nd nearly all of the then employes of the railroad company, perhaps a hundred, were using what is known as the main entrance; that is the gate entrance, out of which only eighteen or twenty were involved in the strike trouble.

Redirect examination by Mr. Sprowls:

We do not have a full quota of employes at the shops at Hudson at this time; Andrew Johnson, Edwin Lomnes and Hans Lystad, to whom Mr. Burton referred, are three supervisory officers at the shop; it would put us to a great inconvenience to spare these three men from the shops at the same time that Mr. Burton and I are away; we would have difficulty in operating the shop during their absence.

Recross-examination by Mr. Peter Cadigan:

Andrew Johnson, Edwin Lomnes and Hans Lystad supervise at present fifty or sixty men; they are foreman carpenters; ordinarily they supervise a hundred or hundred and twenty men; they are in charge of men who are now working; of men who took the place of those who are out on strike.

Whereupon the plaintiff rested its case.

Mr. Cadigan: At this time we would like to move that all testimony of the witnesses for the relator here in reference to statements made by them that certain of the relator's witnesses were scabs, be stricken out as irrelevant, for the reason that under our interpretation of the preliminary restraining order that particular act is not restrained.

The Court: Well, assuming for the purpose of the motion that is true, it would seem to me that the evidence might remain, particularly that part of it which relates to what was said near the main gate on the afternoon of August 1st. Probably the evidence in that regard with reference to what the defendant Cronk said at some time August 2nd or later, at any rate at the school building, perhaps is not material, but the motion will be denied.

Mr. Cadigan: Exception.

To which ruling of the court the defendants then and there duly excepted.

[fol. 94] Mr. Cadigan: I move at this time that the defendant Walter Cronk be discharged, for the reason that the only evidence of any act performed by him at all is the statement made by him in the school yard a block or so away from the premises of the company, making the statement to the witness Burton that he and the men with him were a fine looking bunch of scabs. I do not believe the provisions of the temporary restraining order restrain that. It is true the injunction does, but the preliminary restraining order I do not think does.

Mr. Sprowls: It does not in words; we concede that.

(Argument not transcribed.)

The Court: I think it cannot be said as a matter of fact that one who uses that word towards employees is not attempting to intimidate. Of course, I do not suppose the intimidation or attempt would amount to much, or not amount to much in this case, but that can be taken care of in another way, and the motion will be denied. You may note your exception, Mr. Cadigan, and proceed.

To which ruling of the court the defendants then and there duly excepted.

Mr. Cadigan: I make another motion at this time, that the defendant Cullen be discharged for the reason that there is not any evidence showing that he is attempting to violate this injunction in any way. The only evidence, as I understand it, and my recollection is—if I am not right the court will correct me—but my recollection is that Mr. Cullen was on the street, coming down a public street there where one or two men had congregated some distance away.

The Court: That is true according to Mr. Thorn's testimony, but he is placed there in the group by Mr. Larson's testimony.

Mr. Sprowls: I think that is correct.

The Court: He named him as being there in the group. I would suggest that you make further inquiry before the close of the matter as to that. The motion will be denied. You may renew it.

To which ruling of the court the defendants then and there duly excepted.

Mr. Cadigan: For the sake of making up a record, I move a dismissal of the case against all these defendants on the ground previously stated, that the court is without jurisdiction to try the direct issue in this case for the reason that each of the defendants have requested a jury trial.
[fol. 95] The Court: Denied.

To which ruling of the court the defendants then and there duly excepted.

Whereupon the defendants introduced the following evidence:

Joe Ritchie, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Joe Ritchie; I live in Hudson and have lived there for ten years; I was employed as a car repairer for the Omaha Railroad at North Hudson previous to the calling of this strike; I am married and have six children; I am twenty nine years of age; my oldest child is seven and the youngest is one year old. I know Mr. Albert Larson and heard his testimony on the stand in this case; I heard him state that at about nine thirty on the 2nd day of August that he saw me, congregated with other men, at the crossing of the railroad track where it intersected Wisconsin Street; I wasn't there, for I left Hudson at seven forty-five that morning for St. Paul; I arrived in St. Paul about nine fifteen, A. M. and went to Mr. Henning's office and from there up to Lawyer Sullivan's office; I was at Lawyer Sullivan's office about nine forty-two. Carl Simonson, George Starr and Eugene Richie were with me; Eugene is my brother and was village marshal at the time and was out on strike; George Starr and Carl Simonson were also out on strike. Mr. Sullivan is an attorney and has an office on Third Street in St. Paul, but I don't know the name of the building he is in; I drove those boys up there and I went with them. We stayed in his office until one thirty in the afternoon and started for North Hudson about six thirty that evening, and I was not in North Hudson that day between seven forty-five A. M. and six thirty P. M.

Cross-examination by Mr. Sprowls:

I fix the date as being August 2nd because I was up to Lawyer Sullivan's office, although I don't remember the exact date I went. [fol. 96] I kept no memorandum of it, and know it was the date because we got a letter from him; I am sure it was the second of August; on the 1st of August I was home helping my brother build a house, and I was working on the house about every day before

August 2nd. I was away from Hudson other days since the 1st of July; I was away for about two weeks in July, from about the 6th of July until the 15th of July; I can not tell what I did the 9th day of July, nor the 10th, nor the 14th; I didn't keep track and don't remember, but I paid attention to August 2nd because I wasn't in Hudson that day. On the 6th day of July I was cone and I went back to Hudson at night and went out again the next morning and during the two weeks mentioned in July I was at Hudson every ni-te; during one of the weeks mentioned I was in Hudson every ni-te, but I was away for a whole week one time. I don't know where I was on the 10th of July; I didn't pay any attention to or keep track of it. There were three other men with me on that trip to St. Paul. We did not see Mr. Henning because he was in Chicago, but I saw two of his assistants, although I don't remember their names. I believe he would remember that I was in St. Paul at his office on the 2nd day of August. We saw and talked with Mr. Sullivan at Sullivan's office on the 2nd of August; Mr. Sullivan is the attorney representing the Unions in St. Paul. There was a memorandum or note made of it because I reported in strike headquarters in Hudson that I was going that day and they have it down; Mr. Sullivan also put it down on his book. The day I left for St. Paul I went to the office of the Union in North Hudson and reported there that I was going to St. Paul that day; Rudolph Birkmost was the Union officer in charge; he is Chairman of the local and I made a report to him, although I have not examined any record in the Union office.

Redirect examination by Mr. Peter Cadigan:

I know what this is (referring to written affidavit handed by counsel to witness); I got it from Mr. Sullivan the day I was at his office, but it does not refresh my memory as I can't read. I was in St. Paul on August 2nd at Mr. Sullivan's office.

Recross-examination by Mr. Sprowls:

I can't read that paper (referring to the affidavit), but I know what is in it because it was read to me by Art Daniels.

[fol. 97] Re-redirect examination by Mr. Cadigan:

I was away from Hudson about two weeks after July 6th, leaving Hudson on the 7th of July. I went to Cumberland to visit my father-in-law; my wife was with me and we stayed there three or four days. We got to Cumberland the same day that we left Hudson and were in Cumberland on the 8th and 9th, although I don't remember as to the 10th, but I was there three or four days; I can't remember when I came back to Hudson; I never paid any particular attention to the dates and I never saw the record made at the Union headquarters when I went to St. Paul. I was in St. Paul on the 1st because I was home working on my brother's house; I was not in St. Paul on the 3rd but I was there on August 2nd as they wanted me to drive to St. Paul. Carl Simonson, George Starr and Eugene

Richie had some business to do and they wanted me to drive to St. Paul with them. I don't remember how many times I have been at St. Paul since the 1st of July but I have been there a good many times; maybe six times since the strike started; I drive over there in my car.

Re-recross-examination by Mr. Sprowls:

I can't remember whether I was there on the 15th of July or not, or on the 20th of July, but out of the six times that I have been there since the 1st of July, the only date that I recall absolutely is the 2nd day of August.

SAM MICHAELSON, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Cadigan:

My name is Sam Michaelson and I am a defendant in this case. I am fifty-one years of age and live in North Hudson, Wisconsin, and have lived there seven years steady but have lived within four miles of Hudson for thirty-six years. I am a married man of family and am the father of the defendant Clarence Michaelson. I am a striker and was in the employ of the Omaha previous to the strike; I am a member of the machinist's organization and I am president of the village council, being elected last spring, this being my second term; [fol. 98] I qualified for office. We have a town marshal at North Hudson elected by the people; he is also a constable. Since the 1st day of July I have appointed twenty-four special police officers; they were appointed all at the same time subject to call. The population of North Hudson is about six hundred and out of that six hundred, seventy-five or a hundred are strikers, although I have never counted the exact number. As President of the village of North Hudson I look after the policing of the village, and during the day time on an average there are six or seven officers on duty that wear stars. At first I never assigned any of them to any certain place and the last time I tried to assign them was to call them so as to keep them on a certain beat and keep things in order. I don't think there have been more than eight or ten that I know of on duty at any one time. Three of the six here were officers appointed by me, namely, Joe Peterson, Arley Martin and Matt Anderson. At one time Arley Martin was a deputy sheriff after the strike order went into effect, but he was deputy only for about a week. As President of the village I have occasion to be on the streets in the day time or around the property of the company; I generally make it my practice to go around the whole village; I have done this nearly every day; I go around and see that everything is peaceful. I have delegated and instructed Martin, Peterson and Anderson to act as policemen in the village of North Hudson; I had them sworn in the 1st day of August or the last day of July. I have never caught any number of strikers assembled around any of the various points of entrance to the Omaha

property. Somewhere around about the 1st of July or the 1st part of August I met the master car builder (Mr. Thorn) with the sheriff and a deputy. On August 2nd I remember walking across the track at the railroad entrance on the crossing and I came back that way; this was on Wisconsin Street, a public street which has been in existence for fifty or sixty years; it joins First Street that goes up to the ferry landing or the swimming beach; this is the street that is close by the tracks of the Omaha railroad leading into the shop grounds. There is sometimes a good deal of traffic on the street, other times none; there was once upon a time that seventy-five or a hundred automobiles went back and forth there in a day. The swimming beach is down one end of this street, and some of the people go off down through the railroad property to the swimming beach; the most popular point of the beach is about two or three blocks from this [fol. 99] railroad crossing; this street is traversed by people going to and from the beach during the day. People from Hudson drive down the street because there is a regular part next to it and strikers go up and down that street to the swimming beach.

As President of the village I have no recollection, and no case has come under my observation where there was a large assemblage of strikers, forty or fifty, or sympathizers, in close proximity to the company's property at the intersection of the railroad tracks in Wisconsin Street down to and including August the 2nd, 1922. I had heard that a crowd assembled there once but I can't remember the date; I think it was Saturday, August 19th, but I was not there; I know nothing about it. I know the location of the gate at the main entrance, but no case has come to my attention of any number of strikers being at the gate, but I know there were some on the lot across the street, but I never was with them, so I haven't seen them. I made the officers take the oath of office and they promised they would do just the same for one side as the other, the public and take care of the people of North Hudson; they subscribed to a constitutional oath to do that which was administered by a justice of the peace.

Cross-examination by Mr. Sprowls:

Normally we have one constable and one village marshal in the village but I appointed twenty-four special officers; I thought we needed them because the master car builder (Mr. Thorn) who made the complaint that there was an assembly one night and the sheriff and deputy sheriff or three deputies, I think it was, came up there and stayed at the gate or that street that they call Monroe Street. This is a street that runs east and west connecting with that gate on Fourth Street, and they were there and I wanted to try and keep the peace and order in that little village so there wouldn't be any expense or burden to the village or they wouldn't have any cause for keeping the sheriff or deputy sheriff there. These officers volunteered to serve the village without pay; I gave them each a star, but I told them not to wear it only when they were called for certain duties.

I heard no complaint about them. Normally, practically all the people live in North Hudson have the heads of their families employed in the Omaha shop, and there were very few that were not supported by their husbands or fathers employed in the shops, so [fol. 100] that the only protection we really needed was against the inhabitants of North Hudson. Joe Peterson was one of the special police and I am sure that he never made threats or called employes of the railroad company names. I have been around the entrance to the shops on two or three occasions since July 1st at about seven thirty in the morning, and I am sure there has not been any assembly there at that hour. I have not been around at four thirty in the afternoon. The majority of these deputies appointed were former employes who were now out on strike, only one, an officer named Klatt was not an employee; he is running a hotel in North Hudson; the twenty-three others are all men who were former employees and are now strikers. I go down on Wisconsin Street, which runs alongside the company's property nearly every day, and I probably was there the morning of August the 2nd, although I can't remember any of the people that were there. I did not see Mr. Larson or Mr. Thorn on that day.

Redirect examination by Mr. Cadigan:

Strikers living in Hudson come over to North Hudson to find out news from Union Headquarters which are located at North Hudson. There must be about two hundred strikers in Hudson which, together with seventy-five or a hundred from North Hudson, make about three hundred strikers altogether. There is just the Willow River between Hudson and North Hudson, just a bridge between the two towns, and it is only a mile from the center of North Hudson to the center of Hudson. There have been no disturbances in North Hudson that have to my knowledge as President of the village; no destruction of railroad property. After the injunction paper was served on us we arranged to police the town in shifts, and they are divided now; there is only the chief who would call them and set them at any beat he would want them; they are divided into a night and day shift and are cautioned to be ready for call in case of trouble. All of the temporary police officers are residents of the village of North Hudson and I am acquainted with all of them, and I selected them with a view of getting the best men possible in North Hudson for that kind of work.

[fol. 101] WALTER CRONK, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Cadigan:

My name is Walter Cronk; I am thirty years old and married and have three children; I have lived in Hudson for twenty-one years, and am a member of one of the striking crafts, namely, the black-

smiths' Union and am now on strike. I have no recollection of being in the school house yard on the 1st day of August at the time that Mr. Burton claims to have driven by there, and I have no recollection of yelling at him and the men in the car "Dirty low lived scabs; you are a fine looking bunch of scabs.' My recollection is that I was at strike headquarters that afternoon and I do not remember seeing Mr. Burton and the others going by in a car; I don't remember using any such language to anybody; toward Mr. Burton or any other person.

Cross-examination by Mr. Sprowls:

At the time that Mr. Burton testifies to I was in the position of taking care of the pickets; from four o'clock until nearly five o'clock in the afternoon was my busy time, and from seven or eight o'clock until nine in the morning, I was pretty busy, checking in and checking out pickets. Altogether as pickets we use all the men that are at home and that are available, and we use shifts for every eight hours, one picket at a post. We maintain pickets at the big gate and the small gate, at the crossing on the west side, on the north side and the depot; we keep one at the crossing and one at the west side along the fence, there is a long stretch of fence and no entrance there but we keep a picket there, and one at the depot, and one on the north side; we have six pickets and they are relieved every half hour and I handle it all from headquarters. We make the pickets up in squads; we send them out for half an hour; each man comes and finds out and they know when they are to relieve the other men. I was out at the school house a number of times calling pickets into the school house, but I don't remember being out there lying on the grass; I don't believe I have been out there since the strike has occurred; I am busy every day. I know Mr. Burton and [fol. 102] I have seen him go by the schoolhouse through the headquarters window; I don't remember calling him a scab; I did not call him a scab; I don't remember calling any man a scab. At the west side of the shop grounds there is a long fence with no opening in it; we keep pickets there because some of the men said the others may come across the lake in a boat and maybe the picket could talk to them; we put pickets there so there would be nobody disturbing anything in the shop grounds. I did not understand the restraining order prohibited putting pickets in a place like that. We had two posts on the west side which is a stretch of fence three or four blocks long; a wire fence for one hundred fifty or two hundred feet and then the rest of it is a high board fence, and on the extreme north end of it is a wire fence. We have six posts. The posts are not very far from headquarters and they come over and sit down to lunch or play whist and they hang around headquarters; I don't know how the men arrange it and they take the posts between themselves and go on maybe an hour and a half and the picket relieved would walk down to the beach and go in swimming; the men get tired picketing all the time. I want to live up to the injunction.

Redirect examination by Mr. Cadigan:

With reference to the area of the village of North Hudson, the railroad property is up along the lake shore and within the confines of the village; the village surrounds it and the village streets run around it.

Recross-examination by Mr. Sprowls:

There isn't any entrance on the north side where we maintain a picket. The majority of the pickets stay up at the Union Headquarters and loaf around the schoolhouse until the time comes to relieve the man who is on duty. I can't say whether they loaf around where the pickets are on duty, as I have never been around where the pickets are; I give the men instructions to go away; to be on picket duty and when they were off picket duty to go away. I know nothing about the picket at the gate demanding of men who wanted to go into the shop yard that they go up to headquarters and get a pass before they went in; I have nothing to do with the pass busi- [fol. 103] ness, and I know nothing about it, and I do not know of any case where pickets told men who wanted to go into the shop grounds to get a pass before they could go in. Sometimes a man comes in and wants to get an order to go in and get his tools; otherwise the picket would ask him to stay out.

The picket would let a former employe go in if he didn't have a pass. Some of the men the first morning of the strike had left their tools strewn around the shop and they wished to get an order and they came to headquarters and they said "Maybe we had better get an order so we can show it to the pickets in case they want to ask us to come back."

Arley Martin, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Cadigan:

My name is Arley Martin; I am thirty-four years of age and married; I reside in North Hudson and have two children. I was in the employ of the Omaha Railroad at the time the strike order was issued as a car repairer; I am a member of the car repairers' Union; I am special policeman in the village of North Hudson and was appointed August 1st by the President of the village, and the Board of Trustees. Previous to that time I was deputy sheriff but I resigned on July 14th. I was appointed police officer; I subscribed to a constitutional oath. I found work as special policeman at Hudson more agreeable than work with the sheriff, but I had no difficulty with the sheriff, although he asked me if I wanted to resign and I told him I did on the morning of July 14th. Since I have been special policeman, the only trouble I had with anyone was with a man who was driving a bus; I arrested him for breaking the state

law of speed limits. I heard the testimony of Mr. Larson that he met me on the railroad tracks on the morning of August 2nd; I was past there. I received a call in the morning that they saw somebody drunk down in the yard and they were cursing and swearing, kind of disorderly conduct. I was about two blocks away from where the railroad intersects Wisconsin Street and I went down the highway one block and turned to the left and I took the short cut to where it was reported this disorderly conduct was and investi- [fol. 104] gated and upon by return near the vicinity of the Burkhart Power Milling Company, I saw Mr. Thorn and Mr. Lawson sitting under a shade tree and they spoke and I said "This is a warm morning" and Mr. Larson said "Yes, it is." I walked on over to the power plant and looked over the railing and stopped five minutes and then proceeded direct across up in North Hudson. I heard the testimony of Mr. Touton, Deputy United States Marshal, and I heard him state as to the number of men on August 4th, about seventy-five, that were standing near the place which he described, and I heard him state I was among the crowd. I came on August 4th, that evening, down there; I had got orders to go and see the village marshal and I looked from my door and I could see the main entrance of the shop gates, and I noticed the village marshal's car was there and I went down to ask the village marshal if there was any orders; I walked down to talk to the village marshal and then proceeded down the street and went to the grocery store; I just remained there a few minutes talking to the marshal.

Cross-examination by Mr. Sprowls:

I think it was prior to the 1st day of August that I arrested Grant for speeding; at that time I was deputy town marshal; I was sworn in as a town marshal on the 14th day of July and have been a town marshal since that time, with the exception of one day. Grant was going through the village of North Hudson at the time of his arrest; there was one man in his car and maybe more; I suspected he was hauling this man or others away from the Omaha shops. I have arrested no others for speeding; violating the state laws; fifteen miles per hour, that is the state law; I am not sure if we have a local speed ordinance; I think it is eight miles per hour or twelve. Grant came through the village speeding his car and he hit a little boy with his car and two special policemen stepped off the curb and signalled him to stop but he went right on. On the 4th of August I went by the main entrance and saw Mr. Touton there. There were a few people back from the gate, quite a ways back of the lot; I wasn't noticing very much; I spoke to the village marshal; I couldn't say how many were there. The village marshal's office is one block south from this entrance; I saw the marshal's car [fol. 105] at the entrance to this gate and I went to see if there was any specific duties to do, and then I spoke to Mr. Touton, the Deputy United States Marshal and from there I proceeded due south to the grocery store; I was probably there fifteen minutes, more or less; the crowd was very peaceful. I knew the temporary restrain-

ing order restrained us to one man as a picket. I never went down Wisconsin Street to cross the railroad tracks. I went within one block of where this railroad intersects the street and from there I took the shortest direct possible way that I could to investigate this trouble. I saw Mr. Thorn and Mr. Larson on my way back after making the investigation; they were sitting down by the Burkhart Milling Company. This place is almost due south from the point where Wisconsin Street crosses the railroad tracks. I fix the date as August 2nd because I was re-appointed special policeman on August 1st; my present appointment as policeman has already expired; I turned in my star and offered my resignation; that was on Saturday night or Monday night (August 19th-August 21st); I don't know how many special police there are now in North Hudson and can't say whether they have as many now as they had at the time I was serving.

Redirect examination by Mr. Cadigan:

The path I referred to enters the Burkhart Power Company and goes on down to the ice house, and also leads to the fishing grounds. It also leads to the depot and has been traveled very much and has been used by the public for some time past, ever since I have lived in the village of Hudson, that is since November, 1915. This path is on the railroad company's property most of the way; it is a well marked one man path and in some places two could walk, probably three or four feet apart. I was not at the track entrance with any crowd of men; I was by myself because I was an officer of the law to command peace. There were no other men around me, only Mr. Larson and Mr. Thorn, and the only men I was associated with that morning were those two, and if Mr. Larson or Mr. Thorn stated that they saw me in a crowd, they are mistaken; I did not see any men down there at the crossing where Wisconsin Street crosses the track; I didn't look in that direction; I was one block away from there.

[fol. 106] JOHN HAGEN, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

I am forty-eight years old and live in Hudson; I am a married man with four in the family. I was in the employ of the Omaha Railroad previous to the issuance of the strike order, and I quit worw in pursuance to the order; I was a car man and belonged to the car repairers' Union. I know Mr. Larson and Mr. Thorn. I heard the testimony of Mr. Larson that I was seen by him in the vicinity of the company property on Wisconsin Street where the tracks cross it on August 2nd, 1922. On August 2nd, 1922, at nine thirty in the morning, I was over at the schoolhouse and I walked down that

street towards the lake; I went over the railroad tracks on that street but I did not stop; I didn't see anybody standing there on that street; I walked toward the lake; I stayed there for a while and came back farther down and through a path that goes through there, this path goes over the railroad company's property and lots of people walk there; I have known people to use that path for fifteen years. I never saw an assemblage of people, strikers, around the vicinity of the company's property and I never was present; I never took part in any disturbance around Hudson; was never arrested in my life. I met Mr. Larson on the morning of August 2nd when I was coming back I met him when I crossed the track up to that path; he said "Good morning" and I didn't answer. I usually walk over there and go down to the beach and this is the first time I ever saw Mr. Larson so it must have been the 2nd of August; I was alone; when I went across there in the morning I didn't see anybody around where the railroad tracks cross the street.

Cross-examination by Mr. Sprowls:

On the morning of August 1st I suppose I was over at the school house. On July 30th about nine thirty I was home, I guess. My recollection as to the morning of August 2nd is because it was the only time I met Mr. Larson; I do not look at the dates when I go out. I crossed the railroad tracks right on the street and didn't see any [fol. 107] crowd; after I got across the railroad track I left the road and went over that way; I saw Mr. Larson and then I came back and I could see the point where the railroad tracks cross the road when I went up the path. I should think it must have been around nine o'clock. I met Mr. Larson when he came down the path toward the depot; I didn't see anybody else but Mr. Larson and he was on the railroad tracks. I didn't look up the railroad tracks from there and I could see if I had looked.

Redirect examination by Mr. Peter Cadigan:

I crossed the street at the railroad tracks at nine o'clock on August 2nd and went back by the short cut; the short cut crosses the railroad tracks about a block or a block and a half or so away from the intersection.

DAN CULLEN, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

I am forty-two years old and married and I have one adopted child; I live in North Hudson and am one of the railroad strikers. I worked for the Omaha previous to the strike and am a member of the blacksmiths' organization. I have lived in North Hudson for four years and I have been in Court during the hearing on this matter. I have acted as picket for the strikers but I was not so acting

on the morning of August 2nd, 1922. On the morning of August 2nd, I was home until about nine or nine thirty and I went down Wisconsin Street; I go down that street a whole lot; I go down there bathing lots of times; that is the way to the bathing beach. In going that way you cross where the railroad tracks run into the company's property. On the morning of August 2nd I saw a picket there at that point; he was Ole North. There may have been somebody else there, I don't know. I did not stop but went right on down to the bathing beach; I didn't stay long at the bathing beach and walked back. I do not recollect seeing Mr. Thorn about nine thirty that morning nor Mr. Larson. There is nothing in particular that calls the date of August 2nd to my mind but I am pretty sure it was that [fol. 108] day. I remember seeing Ole North there and I think there was somebody else there to; I didn't pay any attention to them; I went right along.

Since the injunction was served I have not participated with other men in assembling around the company's property, either at the gate or around the premises of the company for the purpose of preventing work or intimidating employes and preventing them from working. I have not been in any disturbance or attempted in any way to interfere with the operation of the company's propery and their business in North Hudson. I go down the path that has been described right along, two or three times a week, sometimes in the evening. There is a friend of mine named Sutherland and I go down to his place quite a lot over this path; the path is generally used by the public and has been so for ten years; during that time people used to go across to Dr. Till's place. This path leads to the bathing beach but I have never used the path to go to the depot.

Cross-examination by Mr. Sprowls:

I was down there across the tracks on August 2nd at about nine o'clock and did not see either Mr. Thorn or Mr. Larson. Mr. North was on picket duty; I think there was someone else near by; I could not say how many or who they were; I did not speak to them. North is the only one I noticed; I didn't pay any particular attention. There were cars going across there and people going across; I just walked down there and came back; I went right along by where the track crosses the road. When I came back there were some around this place but I never noticed who they were; I could not say whether Mr. North was there or not at that time but I think he was. I go down there pretty nearly every day; sometimes I go down bathing; sometimes I go to Sutherlands; on that particular morning I thought I would go down and have a bath, but I didn't take any so I came back. I didn't see Mr. Larson or Mr. Thorn either going up or coming back.

Redirect examination by Mr. Peter Cadigan:

There was nobody on the tracks except Ole North who was standing in the middle near a bunch of ties and he was the picket.

[fol. 109] CLARENCE MICHAELSON, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Clarence Michaelson; I live in North Hudson and have lived there practically all my life; I am nineteen years old and was working in the Omaha shops at North Hudson previous to the strike order as a car repairer; I am a son of the defendant Sam Michaelson. From the 15th to the 29th of July I was in Camp Douglas in army training, being a member of the National Guard; I got back to Hudson on the night of July 29th. I heard the testimony of Mr. Larson that he saw me on August 1st with other men at this railroad crossing where it intersects Wisconsin Street; I also heard the testimony of Mr. Burton to the effect that on August 1st near the shop entrance he saw me standing near in company with other men; Joe Peterson and someone else; I do not remember seeing Mr. Burton that day, and I did not yell "Dirty scab, dirty low lived scab" at him, and I did not shake my fist at him. On August 1st I was five miles east of Hudson working for Walter Baker, farmer; I started working for him the morning of July 31st; On July 30th I was on picket duty on the north end, at the little opening in the fence which leads to the shops. On July 31st I left Hudson at six fifteen in the morning for Walter Baker's farm and arrived there about seven fifteen; I went by automobile and worked all day July 31st; that was on Monday; I returned to North Hudson that night about eighty thirty and I was not near the railroad property on that day. The following day I went again to Mr. Baker's farm, leaving at the same time and was in company with one William Peterson; I was at the farm all day August 1st and I think we stayed at Baker's farm that night and came back to Hudson on the 2nd; I also worked for Baker on the 2nd and again on the 4th, 5th, 7th and 9th of August. On August 3rd I was with William Peterson at Hudson at his home. I was picketing on August the 8th at the same place near the north end. When I came back to Hudson I did not wear any soldier's uniform but I had army pants and leggins on that I purchased at an army store; also a shirt; also army hat and was wearing that around Hudson at the time. I was not in Hudson on July 27th at all, but was at Camp Douglas.

[fol. 110] Cross-examination by Mr. Sprowls:

Walter Baker is not in the court room. William Peterson went out every day we went to Bakers, and he is not in the Court room. I can remember the days I worked for Baker. From the army clothes that I wore I looked as though I had a uniform on. When I was picketing up at the north side of the shop grounds I didn't see anyone trying to enter from that side; the only access was a little opening where some fellows from Stillwater had come through on

the 15th of July; I saw them myself before I went to Camp Douglas. The fence is a wire fence at that point, and has a big hole in it; I do not remember seeing Mr. Burton about the entrance to the shop grounds at all within two or three days after I got back from Camp Douglas, and neither did I see Mr. Larson at that point. I was not down at the main entrance gate leading into the shop grounds within the first week after I got back from camp. William Peterson lives in North Hudson and is a man who is out on strike and Mr. Baker is still living out on a farm near Hudson.

MATT ANDERSON, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Matt Anderson and I live in North Hudson and have lived there for seventeen years; I am married with a family of four children, the youngest of whom is about sixteen years. I was employed at the Omaha shops previous to the strike; I was appointed as a special policeman in North Hudson on the 1st of August by the Village Board, and was sworn in. I heard the testimony of Mr. Larson about my being on this railroad property on August 2nd at about nine thirty in the morning; I know the place he describes where the tracks cross Wisconsin Street; I was there on the morning of August 2nd at about nine thirty, A. M.; there was nobody there with me; I did not see Ole North there. I stopped and saw Mr. Thorn coming down the track and saw Mr. Larson coming right after him and I looked down the track and I wondered what was going on; saw Mr. Larson pass me and said "Good Morning, Mr. [fol. 111] Larson" and that was all and Larson went on down and I went home. I was on police duty that day but did not have my star. I had to cross over the track to come back and I wasn't down there over half an hour; I was watching some fishermen pulling in a seine. I know it was August 2nd because that is the only time I have been down there this month; I believe August 2nd was on a Wednesday.

Cross-examination by Mr. Sprowls:

I served as special deputy marshal in Hudson before this time; I was appointed for years but I was not a deputy marshal there prior to August 1st; the village wanted me to be a special police when the strike started but I refused because I thought I was getting too old; I accepted an appointment on August 1st and went down across the tracks there on that morning; there was a picket there that morning, but I don't remember who he was. I did not cross the railroad tracks that morning; I wasn't where the railroad tracks enter the shop grounds; I know the place; I went down Wisconsin Avenue that day, but didn't have to cross the tracks at that

point; I took a short cut alongside the trail, a short cut down toward where I crossed; this is, I should judge, about three or four hundred feet below that crossing; the picket was there on the crossing but I don't know who he was. I saw Mr. Thorn when he was coming down on the path; I went down there first ahead of Thorn and when Thorn came back I was on my way back home again when I met Thorn. I met Mr. Larson on my way back but I can't say exactly what time; I remember it was in the forenoon. I saw Mr. Cullen on the path but didn't see John Hagen, Arley Martin or Art Daniels. There was quite a bunch of women and children up where the picket was.

Redirect examination by Mr. Peter Cadigan:

There was also some men at the crossing, but I don't know who they were; I was not there at all.

[fol. 112] OLE NORTH, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Ole North; I live in Hudson and have lived there over thirty-six years, and was employed by the Omaha Railroad previous to the strike as a machinist; before the strike I was in their employ thirty-six years; I am on strike at present. I heard Mr. Larson testify that he saw me on August 2nd, I don't remember seeing him; I was picket that day from eight, A. M., to four, P. M.; I was on the crossing about an hour or two and then we changed off; we can't have more than one picket on the crossing and I was on the crossing that day; this is the point where the Omaha tracks run into the property, over a public street. I don't remember who I saw that morning as there is so many traveling back and forth and there may be a hundred going by there every day; I can't keep track of all of them; it is a busy place. I don't remember seeing Matt Anderson there that day, or Mr. Cullen or Fred Henstra, or Sam Michaelson or Clarence Michaelson or Joe Richie; I saw lots of men but I don't remember who went by there; I don't remember seeing any of these men. I didn't see any crowd in the morning that I remember; there was none where I was standing; I don't remember any women or children or anything of the kind assembling at or near this place; there are no buildings around there.

Cross-examination by Mr. Sprowls:

There are not any buildings on the other side of that crossing for about a mile; people go down to the bathing beach by there in the morning and all the time; I don't remember whether Dan Cullen went by that morning or not; I don't keep track of the people that

go by; I don't put down their names. I went on picket duty at eight o'clock that morning and I was there all the rest of the forenoon. There may have been a crowd there and I may have seen Mr. Larson but I don't remember if I saw him or not; he might have passed by me there for all I know; probably I saw Mr. Thorn but I [fol. 113] don't remember; I saw Mr. Larson and Thorn come out of the entrance of the shop yards very often when I was on picket duty; I have only been on that crossing twice since the strike; I heard Mr. Anderson say that he saw a crowd up there that morning and there may have been, but I don't remember how big that was. Walter Cronk assigned me to picket duty at that particular point, he was the man in charge of the pickets and Secretary of our local organization. We had three pickets there between the hours of eight and four, but there is only one picket that has the right to be up on the crossing; the other pickets are at the side of the crossing; I was stationed right in the middle of Wisconsin Street where the tracks cross it and the other two pickets were on the side of the opening into the shop enclosure; they are up there on the side of the one hundred and fifty feet opening so there are three men that are covering that opening; there is only one place to enter and that is the opening of one hundred fifty feet. They have got three pickets at every place all around where employes come and go; I don't know who determined that there should be three pickets at every place; I suppose it is the practice to maintain three pickets at each place of ingress and egress, and as far as I know they are still doing it. I read the restraining order that was served down there July 20th or 21st and it says we can keep one picket on the center and I guess they can have three altogether and change off; nobody said anything to me about it when they appointed me and that is all I know. I mean by saying they could have three if they changed off; when they put us on picket duty there is three to each entrance and the law says there can't be more than one on duty at a time and I do not figure that they are on duty until they go into the center of the street, but the practice was that when I stood in the center of the street on picket duty, the other two pickets remained at the side of the opening. I am not a officer of the Union. I was present when the Deputy United States Marshal explained the restraining order to the men. There were two extra men down there at the side of this opening on the morning of August the 2nd but I don't remember who they were; they have got it marked down in a book at Union Headquarters, but I don't think any of the twelve defendants in this case were picketing with me that morning.

[fol. 114] Redirect examination by Mr. Peter Cadigan:

The pickets are assigned in squads of three and they relieve each other at the posts of duty. I don't know how wide that crossing is and I can't tell how far they were away. The entrance into the shop yards is about one hundred fifty feet wide and each picket was probably fifty or sixty feet away from me; there is a big shade tree there and when the sun is hot they lay under the tree; the tree is not at the

side of the road close to the railroad property but on the other side, and these men were across the street under the tree and that is generally where the other two pickets stayed that relieved me; there are no benches or seats under the tree. I don't know who the other two men were, whether they were officers, policemen or not; men wearing stars never act as pickets. I have done picket duty at pretty nearly all other points except at the big gate. It is very seldom that three pickets are together; they are mostly out around on duty and generally only one man. On the west side of the railroad property they are walking back and forth and they have six pickets on that side; there is one at the northwest corner and one a little farther down this way outside that railroad fence. There are six pickets on duty at the same time but they are not all together; they are spread out, and there are three assigned to each post; that would make eighteen, and that is all the pickets there are all over the property, including the main entrance and everything else; there are three pickets on each entrance where they enter and there are six on the west side where there is no entrance at all; there can't anybody get through the fence there; they have got six pickets on the west side of the railroad property and three on the north side, either three or four these are not bunched together, they are just there single; these eighteen are not all on duty at the same time.

WALTER CRONK, one of the defendants herein, recalled as a witness on behalf of the defendants, testified as follows:

Direct examination by Mr. Peter Cadigan:

I am an officer of the local and am in charge of the pickets during the strike; they are assigned in army form by putting in squads; the [fol. 115] first man will leave at say eight o'clock and he goes down and takes the post for half an hour or an hour, whatever they make up between themselves, sometimes the men wanted to do a little work at home and one man will take the shift for maybe half a day and then the next time their turn comes the other party that left they will give this other man a chance to make up for that, and the same way at all posts. They come back down to the schoolhouse or they go home, downtown, about a mile walk; they change off so they can go home to their meals so there will be only one picket, and they have all been thoroughly instructed. One picket is assigned for duty at a post and there are three in a squad; they are assigned for eight hours so we can get them any time within that eight hours. Three are assigned to one point changing to suit themselves so that there will be only one picket. Sometimes they will go on and one man will take it for pretty near all day alone, and the other two will go swimming, or come down to the headquarters and loaf around there and go home.

Cross-examination by Mr. Sprowls:

They do not hang around the gate; I do not know whether there are three there at any entrance at the same time. I heard Mr. North testify that there were three men at this entranc on Wisconsin Avenue at the same time; also that there were six men at the same time on the west side of the shops where there was no entrance; also that there were six men on the north side of the shop ground but they were not all up there at the same time as I know of; they were assigned three to a squad. We instructed the men that there should be but one at a time.

JOE PETERSON, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Joe Peterson; I live in North Hudson; I am a married man and have lived there three years; I was employed by the Omaha Railroad previous to the 1st of July as an apprentice carpenter and am now out on strike; I know Mr. Larson and Mr. Burton and have [fol. 116] known them for some time; my age is twenty-four. I was acting as a special policeman in the village of Hudson, being appointed on the 14th day of July; I wasn't at the main entrance on the 1st day of August and did not call Mr. Burton or the man with him scabs as he testified; I was at home on the 1st of August, my wife being sick and under a doctor's care. My mother lives with us; she is about sixty. I report at strike headquarters every day about eight o'clock in the morning; I never called Mr. Burton a scab; I don't think either Mr. Burton or Mr. Larson belongs to any union local; around the 1st or second of August and after that time I was over at the main entrance on some mornings to see if the village marshal had any orders for the day or not; the village marshal's name is Jean Ritchie and he is out on strike.

Cross-examination by Mr. Sprowls:

I heard the testimony of Mr. Touton, United States Deputy Marshal, and I remember seeing him one evening down at the store but I don't think I ever saw him in a crowd down at the main gate, except once, and that was about one hundred fifty feet from the main entrance and there were not very many there; I didn't stop but went home; I did not go around there during the time that my wife was sick and she was sick during the time Mr. Touton was there and I told the village marshal as long as my wife was sick, I could do no duties but that if I had to be called I would do the best I could; I kept my star; I report to Union Headquarters every morning. I lived in Baldwin, Wisconsin, previous to living in North Hudson and worked on a farm and in a garage. The only way I can remember that I was not down at the entrance to the gate on the afternoon of the 1st of August was that my wife was ill and the doctor was there

at the time—Dr. Synon; I called him up and he came there about four o'clock and stayed until five; I fix the date as the 1st of August as my wife was worse that day, but made no memorandum of it, but I saw the doctor's books when I went down to pay him; the doctor made eight or seven trips; I think the doctor's bill shows the hours that he made the call on different days; I have not got the doctor's bill with me. The strikers do not claim that Mr. Larson and Mr. Thorn have no right to work and I don't know whether they regard Mr. Burton as a man who should have gone out on strike or not, and [fol. 117] have no opinion on Mr. Burton's case; I do not regard Mr. Burton as a scab and think it is all right for him to stay at work.

Redirect examination by Mr. Peter Cadigan:

My wife got worse on August 1st and I called up the doctor about half past three and it was four o'clock when he got there; that is how I place the date; I told him it was an urgent call and to come as soon as possible.

FRED HENESTRA, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Fred Henestra; I live in North Hudson and am married; I have three children; I have lived in North Hudson for eight years and worked in the Omaha shops previous to July 1st and am now out on strike. I heard Mr. Larson state that on August the 2nd he saw me with several other men at the railroad crossing; I remember crossing that place that morning between eight and ten o'clock and was going down to the bathing beach to swim, and went in swimming and was there about fifteen minutes; I was with a man, a friend, by the name of Olson; there were five or six others in swimming at that time; after I came out I walked back along Wisconsin Street but did not see Mr. Larson or Mr. Thorn; I did not see Mr. Cullen; all that I saw was Mr. North, the picket, and he was alone. It is a usual practice of mine to go down to this place and go in swimming; I do it quite often, three or four times a week, and some times every day; I remember the date was August 2nd because Ole North was the picket, and I looked in the books; I do not know if any one else was on picket duty there that day.

Cross-examination by Mr. Sprowls:

I went across the tracks on Wisconsin Street that morning and saw Mr. North there alone; I saw no one in the vicinity; I didn't see any other men going in the direction of the bathing beach at the time; neither Dan Cullen nor Arley Martin; I did not see Sam Michaelson at the crossing that morning, nor Matt Anderson, nor [fol. 118] John Hagen; no one else was in sight; the only way

I fix the date as August 2nd was the fact that Ole North was the picket; I didn't pay any attention to whether he was on picket duty at that entrance at other times or not; I did not look to see whether he was on duty on the 3rd; I don't know whether I went swimming on the 4th of August or not and can't remember who I saw on picket duty the last time before August 2nd, and can't remember who I saw on picket duty at any other time. When this rule to show cause was served on me I went and looked in the book and found that Ole North having been on duty that day, that it was the 2nd of August I went down and crossed the tracks.

Redirect examination by Mr. Peter Cadigan:

I am absolutely sure it was the 2nd day of August.

ART DANIELS, one of the defendants herein, called as a witness on behalf of the defendant, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Art Daniels; I live in North Hudson and have lived there about seven years; I am married and have three children; I heard the testimony of Mr. Larson that about nine thirty, A. M., of August 2nd that I was at the intersection of the Omaha Railroad track and Wisconsin Street near the railroad property; I was not there; I was out in the country on a farm; Fred Scoville's farm, about five or six miles out of town; doing general farm work; I went out on the 1st of August which I think was on Tuesday; I arrived there about eight o'clock in the evening and was alone, and stayed all that night and also stayed there the second and left the farm between two and three o'clock on the afternoon of the 3rd for North Hudson; I have not been paid for the work and did not make a memorandum of it; I did not talk over with Scoville about the time I worked there except to ask him if he remembered the date and that is all.

[fol. 119] Cross-examination by Mr. Sprowls:

I worked at that farm before and since the dates mentioned; I was not there the 14th day of July but I was there on the 28th and 29th; I am sure those are the days. I was there on August 1st and went alone; Mr. Scoville is still living on the farm but is not in Court. The reason I state I was not down at the tracks on Wisconsin Street on the morning of the 2nd is because I think it was on that morning I was out on Mr. Scoville's farm. I know the location of the railroad crossing; there is only one place of that kind where the tracks go into the shop yards and I do not remember being down there at any time about the 1st of August or seeing Mr. Larson or Mr. Thorn there; I was a picket down there with William Stanley and another man. When on picket duty I stood on the

tracks at the crossing and when I was on duty Stanley was over away from the tracks altogether and under a tree; some times he and the other man would go up the road and some times they would go over towards the store; the other man would be going one way or the other; I couldn't keep track of where they were all the time but I know they weren't near me when I was on duty. Three were assigned to a post. I was never on duty there but twice; I think it was along the middle part of July; I worked five or six days for Mr. Scoville in all and am sure that two of those were August 1st and 2nd and part of the 3rd; I also worked for him the 29th and 30th of July; I was also out there about the 8th of August, but can't remember the exact date.

Redirect examination by Mr. Peter Cadigan:

At the time I was on picket duty at the intersection of the railroad track and Wisconsin Avenue neither of the other men were close to me and sometimes they were not there at all; they were not picketing with me at the same time. The tree is about a hundred and fifty feet away from the place where the picket stands and the store is about two blocks away; sometimes the picket would walk up towards the store; each time I picketed there were three men assigned in a squad to the place but at no time I was there assigned to picket duty were three men on duty at the same time;

The Court: Mr. Daniels, were there any instructions given to the squad of pickets as to what should be done by the two pickets who [fol. 120] were not on duty, if anybody came along to go into the shop and were stopped by the picket who was on duty, any instructions given to you?

A. No sir.

Whereupon the defendants rested their case.

The plaintiffs offered no testimony in rebuttal.

Which was all the evidence offered or received on the hearing of the above matter.

JUDGMENT

The Court: In the proceeding of the Chicago, St. Paul, Minneapolis & Omaha Railway Company as relator against Sam Michaelson and others, the court finds that on or about August 1st, 1922, in the afternoon of said day, Clarence Michaelson, formerly an employee of the railway company, and at that time and now out on strike with the striking shopmen, was one of a group of men that were unlawfully and in violation of the restraining order issued out of this court, located at the main entrance to the shops of the railway company in North Hudson, and that at that time when several of the employes of the railway company left the grounds said Clarence Michaelson threatened and used abusive language towards them, and was violating the injunction in so doing and in being at that place in company with others, and that such conduct on the part of said Clarence

Michaelson was calculated to and actually did defeat, impede and prejudice the rights and remedies of the plaintiff in this action, as well as being in violation of the restraining order heretofore entered, and the court's conclusion is therefore that the said Clarence Michaelson is guilty of the acts charged in the relation.

The penalty which should be imposed in this case in all of these cases is a matter of serious perplexity on the part of the court. The court would gladly take the suggestion of the defendant's counsel and merely deliver a reprimand in these cases if the court deemed it consistent with his duty; that would be a very easy way out of it for the court, and a pleasant way out of it for the defendants.

But the court issued its warning to these defendants in the most solemn form in which a court can issue its warning, in the shape of a restraining order, signed by the clerk, sealed with the seal of the court, and delivered and made known to each of these defendants, and that process was served by the marshal of this district, or his deputy, [fol. 121] with instructions to explain what that order meant, and I have no doubt but what that was done. So it seems that the time for warning has gone by, and it is the duty of the court to do something more. At any rate that is what the court conceives to be his duty, and that must be done.

This particular defendant, Clarence Michaelson, is very young. His conduct was most reprehensible. But that does not grieve the court so much as the fact that that defendant would come on here before the court and swear to an alibi.

In the court's judgment there is no doubt about his identity, and that he was there and did the acts testified to by Mr. Burton and Mr. Larson, and it grieves the court more I say that this young man should come here and deny those things, than it does that he should have committed the acts which the court finds he did commit. Were he older he ought to go to jail, but in view of his age I have decided that he ought not to go, and hence in his case it is the judgment that he forfeit and pay a fine in the sum of $50 and in default of which he will be committed to the Douglas County Jail.

With reference to the charge against Joe Peterson, the court finds that on the afternoon of August 1st, 1922, he also was assembled with others at the main gate of the shop grounds of the Omaha Railway at North Hudson, and that he was unlawfully there, being in company with numerous others, and that he used abusive language towards the employees as they were coming out of the railroad property, and that therein Joe Peterson violated the restraining order of this court, and that such misconduct on his part was calculated to and actually did defeat, impede and prejudice the rights and remedies of the plaintiff, and did defeat, impede and interfere with justice.

With regard to his case it appears in addition that not only was he doing what he was actually doing, picketing for the strikers, but he was there wearing the badge of authority of the village of North Hudson, being at that time appointed one of the deputy police officers, but instead of doing his duty as a police officer he was there violating the order of this court.

Judgment will therefore be entered against Joe Peterson that he forfeit and pay a fine in the sum of $100, and that in addition thereto he be committed to the Douglas County jail for a period of fifteen days. In the event of the failure to pay the fine he stand committed to that jail until such fine is paid.

[fol. 122] With reference to the charges made against the defendant, Walter Cronk, the court finds that he did use abusive language towards employees of the plaintiff while they were on their way from their places of work to their homes; that such acts were calculated to and actually did defeat, impede and prejudice the rights and remedies of the plaintiff, and did defeat, impede and interfere with justice, and that such acts were in violation of the restraining order of this court.

This particular act on the part of Cronk, the evidence showing that his abusive language was hurled at the employees of the plaintiff when he was alone and at some distance from the plant of the plaintiff, is not considered by the court so very serious in itself. Far more serious were the facts that developed upon the hearing, that this man Cronk is in charge of pickets at North Hudson, and consistently and wilfully has directed and placed pickets around the property of the plaintiff here in violation of the injunction and restraining order.

Some little evidence was elicited in this case by the attorneys and by the court with reference to that practice which had no particular relation to the charges now on trial, and the court is disregarding and not considering that evidence in the determination of the issues here involved. The Court expressly excludes that from its consideration in determining the facts here, and in view of the fact that this man Cronk is not charged here with the really serious violation of this restraining order which his own evidence shows he may be guilty of, the court must confine itself to the charge, which, as I have already indicated, is bad enough and mean enough.

The court does not consider it requires any great punishment to satisfy the plaintiff or the court. And so for the charge upon which Cronk has been ordered to show cause here a fine will be imposed upon him of $10. In default of its payment he will be committed to the Douglas County jail.

With reference to the other defendants, Sam Michaelson, Dan Cullen, Fred Henestra, Ole North, Art Daniels, Joe Ritchie, Matt Anderson, John Hagen and Arley Martin, the court finds that on or about the morning of August 2, 1922, they and each of them were among and formed a part of a group of strikers assembled at a point of ingress and egress to the shop yards of the relator company, and that their presence there was by way of picketing, and that they were assembled there for the purpose of intimidating and preventing the plaintiff from securing men to go into its employment, and of [fol. 123] intimidating and preventing men who might wish to go into the employment of the plaintiff, and that in so being present at that time and place the defendants I have just named, and each of them, violated the restraining order of this court, and are in con-

tempt of this court; that such misconduct on the part of these last named defendants and each of them was calculated to and actually did defeat, impede and prejudice the rights and remedies of the plaintiff, and did defeat, impede and interfere with the administration of justice; and it is the judgment of the court that the defendants, Sam Michaelson, Dan Cullen, Fred Henestra, Ole North, Art Daniels and Arley Martin, each forfeit and pay a fine of $100, and that the defendants Joe Ritchie and John Hagen each forfeit and pay a fine of $50, and that as to each of said defendants found to have committed the act above referred to on the morning of August 2nd, in default of the payment of the fine assessed against him each will be confined in the Douglas County jail.

Execution will be stayed until next Wednesday morning at 10 o'clock, at which time the fines and each of the fines must be paid, or the defendants will deliver themselves to the marshal, and if they do not the marshal will apprehend them, which stay applies to all except the defendant Joe Peterson. In his case he is remanded to the custody of the marshal forthwith.

Now, it has been a matter of perplexity to me to understand how there has come about at North Hudson, among men whom I am convinced in ordinary times are not law violators, such general disregard for the law of the land, a violation of the solemn order of a court of this country, which is your country, and I have been unable to avoid the inference that it is largely due to the fact that the local authorities are so closely associated with the strike movement, and so thoroughly in sympathy with it, that the striking men at North Hudson have forgotten that there is any law except the law of the union to which the local authorities seem to have lent themselves.

Now, gentlemen, remember there is a law of the land, and it must be and shall be, so far as this court is in power to make it so, enforced. You have your rights to go on strike; nobody denies that to you; but going on strike is a quitting of work by the body of workmen in the employ of a given employer for the purpose of improvement in wages or working conditions. It gives you no right to interfere with that employer from securing other employees; it [fol. 124] gives you no right to prevent other employees from going into the employment of the employer.

Your rights in a controversy of this kind have been very accurately and carefully worked out in the restraining order and the injunctions that have been issued from this court. You have not been interfered with in the exercise of any of your valid rights. Every man is entitled to work, and the men who present themselves at the shops of the Omaha Company in North Hudson for employment at this time, even while you are on strike, are entitled to go to work unmolested, and the Omaha Company, or any other employer, is entitled to put those men to work unmolested.

You have a right to make known to the employees that there is a strike on, and you have been provided with one picket at each point of ingress and egress, you have been permitted to have one, to notify prospective employees that there is a strike on. If employees present

themselves for work there that picket who is located there has a right to state the situation, but if that prospective employee does not wish to listen you have no right to dog him and make him listen.

This thing can all be worked out peaceable under the law, and it must be. You know just as well as I do that when you have a group of men located at a point where you expect employees to be, that the group was put there for the force that their numbers may have. It is a form of intimidation. So you are limited to your one man.

And by the way, in the exercise of your rights, that man will be protected by this court, you will be protected in the exercise of your lawful prerogatives in this strike just as much as the railway company. But you must not exceed your lawful rights.

Now, as I have stated at the outset, this whole matter is a matter that grieves the court. There is no pleasure for the court, or I take it, anybody else, to have ordinarily law-abiding citizens haled up before the court for punishment for violating the court's order. But you must bear in mind, gentlemen, that things are going to move peaceably in this district if we can make it so, and all of the authority of the court is going to be exercised to see that this matter is conducted peaceably.

The court does not intend, and will not, take sides in your controversy; that is not the business of the court, but to see that both sides act within the law in carrying on the controversy is within the [fol. 125] court's province, and the court intends to operate within that province.

Are there any suggestions?

(Mr. Faricy spoke to the court out of the hearing of the reporter.)

The Court: The court will correct its judgment against the defendants in the case before the court. In the list of those defendants who are to pay a fine of $100 should be included the defendant Matt Anderson who seems to have been omitted.

Tuesday, August 29, 1922—4 o'clock p. m.

The plaintiff appeared in court by Messrs. Powell & Sprowls, its attorneys, and the defendants by Messrs. Cadigan & Cadigan, their attorneys, whereupon the following proceedings were had:

Mr. Sprowls: I move at this time that the title of this case be amended so as to appear United States ex rel Chicago, St. Paul, Minneapolis & Omaha Railway Company vs. Michaelson et al.

Mr. Cadigan: We have no objection to the amendment.

Mr. Sprowls: Then it will appear United States ex rel., Chicago, St. Paul, Minneapolis & Omaha Railway Company vs. Sam Michaelson, et al.

The Court: Very well, motion granted.

Mr. Cadigan: I have a telegram, your Honor, saying it is understood this case from Hudson is to be taken up, but I have not been able as yet to get in touch by long distance telephone with the local union at Hudson, and would like a little further time, a little further stay.

The Court: How long a time?
Mr. Cadigan: Well, I think by Friday.
The Court: Any objection?
Mr. Sprowls: No, no objection.
The Court: Very well, stay granted until Friday, 10 A. M.

[fol. 126] MOTION FOR NEW TRIAL—Filed Sept. 5, 1922

And now, after judgment in the above entitled cause, come Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Ritchie, Matt Anderson, John Hagen, Arley Martin, Clarence Michaelson and Joe Peterson, defendants, by Cadigan & Cadigan, their attorneys, and move the Court to set aside the Judgment rendered in this case as to them, and grant them a new trial, and for reasons of said motion show unto the Court the following:

1. The Court erred in admitting certain irrelevant, incompetent and immaterial evidence offered on the part of the Government.

2. The Court erred in refusing to grant the defendants demand for a jury trial, as provided by Section Twenty-two (22) of the Clayton Act, socalled.

3. That the judgment of the Court is contrary to the law and the evidence.

4. That, after demand made by the defendants for a jury trial, the court was without jurisdiction to try the issue as framed by the relation and affidavits and the defendants separate answers thereto.

For all of the foregoing reasons, the defendants respectfully request that the judgment of the Court be set aside and that a new trial be granted in this cause.

Cadigan & Cadigan, Attorneys for Defendants.

Which motion for a new trial was, after argument by counsel for and against the motion, respectively, and after due consideration of the Court, on the 5th day of September, 1922, overruled.

[File endorsement omitted.]

[fol. 127] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS—Filed Oct. 28, 1922

Thereafter, on the 28th day of October, 1922, and within the time allowed by the said United States District Court, the plaintiffs in error, defendants below, duly tendered this, their Bill of Exception herein, which, having been seen and examined by the Court and counsel, is by the Court allowed and approved, and the said Bill of Exceptions

is signed and sealed by the Honorable C. Z. Luse, the Judge of said Court before whom said proceedings were had and the same is ordered by the said Court to be filed and made a part of the record herein, which is now accordingly done.

Given under the hand and seal of the Judge of said Court before whom said proceedings were had, this 28th day of October, 1922.

C. Z. Luse, Judge of the United States District Court for the Western District of Wisconsin. (Seal of Court.)

The above and foregoing Bill of Exceptions is hereby approved.
Cadigan & Cadigan, Attorneys for Plaintiff in Error. Powell & Sprowls, Attorneys for Defendant in Error.

[fols. 128-130] Let the Bill be filed and the filing shown of record as of this 28th day of October, 1922.

C. Z. Luse, District Judge.

(Endorsed: Filed Oct. 28, 1922. Wm. H. Comerford, Clerk. By H. E. Ticknor, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO DISMISS—Filed Oct. 28, 1922

[fols. 131-133] Comes now the Chicago, St. Paul, Minneapolis & Omaha Railway Company, complainant above named, by Powell & Sprowls, its attorneys, and moves the court to dismiss the above entitled suit in equity with prejudice, but moves that the said dismissal may be without prejudice to any contempt proceedings now pending which arose out of violations of the temporary restraining order or temporary injunction issued in said suit in equity.

Chicago, St. Paul, Minneapolis & Omaha Railway Company, by Powell & Sprowls, Its Attorneys.

[File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER OF DISMISSAL—Filed Oct. 31, 1922

[fol. 134] On motion of the complainant above named, by Powell & Sprowls, its attorneys, to dismiss the above entitled cause,

It is hereby Ordered, that the above entitled suit in equity be and the same is hereby dismissed with prejudice.

Dated October 31st, 1922.

C. Z. Luse, Judge.

[File endorsement omitted.]

[fol. 135] UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

[Title omitted]

PETITION FOR A WRIT OF ERROR AND ALLOWANCE THEREOF—Filed Sept. 9, 1922

To the Honorable Circuit Court of Appeals of the United States of America in and for the Seventh Circuit and to the Honorable Presiding Judge of said Court and to the other Judges of the said Honorable Court:

The petition of the foregoing plaintiffs in error, who reside in the city of North Hudson, State of Wisconsin, respectfully shows:

That on the 24th day of August, 1922, there was filed in the District Court of the United States of America for the Western District of Wisconsin, a Petition and supporting affidavits charging your petitioners, and each of them, with Crimfinal Contempt of said District Court. The petition and supporting affidavits were identical in words and figures with the exception and that names of your petitioners were changed in the various petitions. That a true and correct copy of said petition and supporting affidavits are hereto attached, marked Exhibit "A" and made a part hereof. That as a result of the filing of said petition and supporting affidavits, your petitioners were taken into custody by the United States Marshal on an attachment issued out of said Court and your petitioners were arraigned before said Court on the 25th day of August, 1922, and each of them made a plea to the said petitions and affidavits of "Not Guilty." That thereafter your petitioners duly moved the said Court that they be granted a jury trial as provided by law. That said motion was duly presented and argued before said Court, and the same was denied by the said Court. That testimony was then re-
[fol. 136] ceived by the said Court and at the close of said testimony, petitioners, through their counsel, duly moved the said Court for a dismissal of said action on the ground and for the reason that the said petition and supporting affidavits did not therein state an offense against any law of the United States or against any lawful order of this Court and for the further reason that the evidence had failed to substantiate the charges made in the petition and affidavits and had wholly failed to prove beyond a reasonable doubt any offense by your petitioners against any law of the United States or against any lawful order of this Court. The Court denied said motion and in connection with the Court's remarks in regard to the same, the Court made statements which your petitioners conclude and believe prove that they were not accorded the presumption of innocence to which they were by law entitled and that they did not receive the benefit of reasonable doubt but that the said Court proceeded on the theory that the filing of the petition and signing of the said affidavits by the complaining witnesses, all of whom were interested in the outcome of

the case, placed your petitioners in a position where they were compelled to prove beyond a reasonable doubt that they were not guilty.

Wherefore: Because of the many and manifest errors hereinbefore set forth, to their prejudice, your petitioners pray that a Writ of Error may issue to their behalf out of the Circuit Court of Appeals for the Seventh Circuit, for the correction of the errors complained of and that a transcript of the testimony, record, proceedings and files in this cause, duly authenticated may be sent to the said Circuit Court of Appeals for its review and consideration, to the end that said judgment and conviction may be reversed and justice done according to law, and to this end your petitioners will ever pray.

Matt Anderson, John Hagen, Dan Cullen, Art Daniels, Fred Hanstra, Artley Martin, Ole North, Clarence Michaelson, Sam Michaelson, Petitioners. Cadigan & Cadigan, Attorneys for Petitioners, Superior, Wisconsin.

[fol. 137] ALLOWANCE OF PETITION FOR WRIT OF ERROR—Filed September 9, 1922

The foregoing Petition is hereby allowed. Bond is fixed at the sum of Two Thousand Dollars, the same to act as a Supersedeas Bond and also as a Bond for Costs and Damages on appeal.

C. Z. Luse, United States District Judge.

Dated September 9th, 1922.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

[Title omitted]

ASSIGNMENT OF ERROR—Filed Sept. 9, 1922

The Petitioners, Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, R. Daniels, Joe Richie, Matt Anderson, John Hagen, Arley Martin and Clarence Michaelson, make and file herein with their petition for a writ of error, the following assignments of error which they aver occurred upon the trial of the case and resulted to their prejudice, for which they submit that they are entitled to a reversal of the judgment therein.

The Court erred:

I. In denying the defendants' motion for a jury trial as provided by law.

[fol. 138] II. In denying the defendants' motion for a dismissal at the close of the testimony on the ground and for the reason that the petition and supporting affidavits did not therein state an offense against the laws of the United States or any wilful offense against any order of the Court.

III. That the said petition and supporting affidavits are wholly insufficient in law in that they do not charge a violation of any law of the United States of America and do not charge any wilful violation of any order of the Court.

IV. That the evidence is wholly insufficient to sustain the judgment, and that the said Court had no jurisdiction to impose sentence.

V. In imposing sentence on the petitioners for the reason the same is without warrant in law.

VI. In entering judgment against the defendants.

Cadigan & Cadigan, Attorneys for Petitioners.

[File endorsement omitted.]

[fols. 139–141] In the District Court of the United States

[Title omitted]

Appearance Bond on Writ of Error—Filed Sept. 9, 1922; for $2,000; approved to operate as a supersedeas; omitted in printing

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[fol. 142] In the District Court of the United States

[Title omitted]

Writ of Error—Filed Sept. 11, 1922

United States of America, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Western District of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between the United States on the relation of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, Plaintiff, and Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Matt Anderson, John Hagen, Arley, Martin and Clarence Michaelson, Defendants, a manifest error hath happened, to the great damage of the said Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Matt Anderson, John Hagen, Arley Martin and Clarence Michaelson, Defendants, as by their complaint appears, We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, within thirty days from the date hereof, that the [fol. 143] record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Seventh Circuit may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Howard R. Taft, Chief Justice of the United States, on the 11th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

Wm H. Comerford, Clerk of the District Court of the United States for the Western District of Wisconsin, by H. E. Ticknor, Deputy.

Allowed by C. Z. Luse, Judge.

[File endorsement omitted.]

UNITED STATES DISTRICT COURT

[Title omitted]

RETURN OF ORDER, ETC.

In obedience to the within stipulations and orders herein I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, a true and complete [fol. 144] transcript of the record and proceedings in the foregoing entitled cause as required in said order and stipulations herein, this 2nd day of November, A. D. 1922.

William H. Comerford, Clerk of the District Court for the Western District of Wisconsin, by H. E. Ticknor, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed October 31, 1922

It is hereby stipulated by and between counsel for the plaintiffs in error and the defendant in error, that the following parts or papers in the record need not be printed.

1. Præcipe for summons.

2. Summons and amendments and orders relating thereto.

3. Returns of Marshal to all processes.

4. Bond for costs.

5. All affidavits in support of petition for preliminary restraining order and temporary injunction, and in opposition thereto.

6. Affidavits attached to answers and returns of plaintiffs in error, defendants below.

It is also stipulated that the following papers, copies of which are returned, shall not be printed, for the reason that the same ap-
[fol. 145] pear in full and will be printed as part of the bill of exceptions.

1. Motion for a new trial.

It is also stipulated that no endorsements to any papers be printed, with the exceptions of the filing marks or stamps of the Clerk of Court.

Dated this 30th day of October, 1922.

Cadigan & Cadigan, Attorneys for Plaintiffs in Error. Powell & Sprowls, Attorneys for Defendant in Error.

[File endorsement omitted.]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed October 30, 1922

To the Clerk of the said Court:

You are hereby requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Seventh Circuit pursuant to a Writ of Error allowed in the above entitled cause and to include in such transcript of record the following and no other papers or exhibits, to-wit:

1. Bill of complaint in equity.
2. Answer to bill of complaint in equity.
3. Preliminary restraining order.
4. Subpœna issued on preliminary restraining order.

[fol. 146] 5. Order of July 29th, 1922, continuing preliminary restraining order in effect to August 8th, 1922.

6. Amendment to bill of complaint in equity inserting Village of North Hudson in the complaint and restraining order dated July 29th, 1922.

6A. Order of August 8, 1922, continuing preliminary restraining order to Aug. 18th, 1922.

7. Temporary injunction issued August 18th, 1922.
8. Petition for rule to show cause why the plaintiffs in error should not be punished for contempt.
9. Affidavits of Albert Larson and W. Y. Burton in support of petition for rule to show cause.
10. Rule to show cause.
11. Order granting motion for contempt.
12. Answer and return of each plaintiff in error to rule to show cause, but not affidavits attached to said answer.
13. Petition for writ of error and allowance thereof.
14. Assignments of error.
15. Writ of error.
16. Bond on writ of error.
17. Citation.
18. Order for enlargement of time for return of citation dated October 10th, 1922.
19. Order for enlargement of time for return of citation dated October 28th, 1922.
20. Motion of relator to dismiss bill of complaint in equity and order thereon.
21. Bill of exceptions.
22. Certificates of trial judge to bill of exceptions.
23. Stipulation as to omission of certain parts of record from the printed case.
24. Præcipe designating parts of record to be included in transcript of writ of error.
25.

Dated this 30th day of October, 1922.

Cadigan & Cadigan, Attorneys for Plaintiffs in Error. Powell & Sprowls, Attorneys for Defendant in Error.

[File endorsement omitted.]

[fol. 147] UNITED STATES DISTRICT COURT

CERTIFICATE OF CLERK

I, William H. Comerford, clerk of the District Court of the United States for the Western District of Wisconsin, at Superior, do hereby certify that I have compared the foregoing transcript of record (except the Bill of Exceptions) in my office in the case herein lately pending of the United States of America, ex rel. Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation, Plaintiff, versus Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Matt. Anderson, John Hagen, Arley Martin, and Clarence Michaelson, Defendants, and that the same is a correct transcript of the parts stipulated to be sent up, except backing, and of the whole thereof including filing, as appears from the records of said Court, remaining in my custody.

I. Testimony whereof, I have hereunto set my hand and duly affixed the seal of said Court, at the City of Superior, in said Western District of Wisconsin, this 2nd day of November, in the year of our Lord one thousand nine hundred and twenty-two and in the Independence of the United States of America the one hundred and forty-seventh.

William H. Comerford, Clerk, by H. E. Ticknor, H. E. Ticknor, Deputy Clerk. (Seal of Court.)

[fol. 148] [Title omitted]

CITATION—In usual form showing service on Powell & Sprowls; filed September 11, 1922, and omitted in printing

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[fol. 149] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR ENLARGEMENT OF TIME FOR RETURN OF CITATION—Filed Oct. 10, 1922

Now, on this 10th day of October, A. D. 1922, upon showing made and upon the application of Cadigan & Cadigan, attorneys for the plaintiffs in error above named, for an enlargement of time for the return of the citation heretofore issued in said cause, and Messrs. Powell & Sprowls, attorneys for the Relator, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, having due notice of said [fol. 150] application, and no objections having been made thereto, It Is Ordered, by the Court, that the time within which the said plaintiffs in error, above named, may file with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, the transcript of record herein be, and the same is, hereby extended to and including the 4th day of November, 1922.

By the Court:

C. Z. Luse, District Judge.

[File endorsement omitted.]

[fol. 151] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CLERK'S CERTIFICATE

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 1 to 150, inclusive, contain a true copy

of the printed record, printed under my supervision and filed December 9, 1922, on which the following entitled cause was heard and determined: Sam Michaelson, et al. v. United States, ex rel. C. St. P. M. & O. Railway Company, No. 3221, October Term, 1922, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this fourteenth day of December, 1923.

Edward M. Holloway, Clerk of the United States Court of Appeals for the Seventh Circuit. (Seal of the Court.)

[fol. 152] [Caption omitted]

UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

APPEARANCE—Filed November 22, 1923

The Clerk will enter my appearance as counsel for the Plaintiffs in Error.

John A. Cadigan, Peter B. Cadigan, Superior, Wisconsin.

[File endorsement omitted.]

[fol. 153] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

APPEARANCE—Filed December 7, 1923

Lyman T. Powell, Lyman T. Powell, John S. Sprowls, John S. Sprowls, Superior, Wisconsin.

[File endorsement omitted.]

[fol. 154] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER SETTING CAUSE FOR HEARING

It is now here ordered that this cause be, and the same is hereby set down for hearing Wednesday, May 2, 1923.

[Title omitted]

ARGUMENT AND SUBMISSION

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. John A. Cadigan, counsel for plaintiffs in error, and by Mr. John S. Sprowls, counsel for defendant in error, and the court having heard the same, takes this matter under advisement.

[fol. 155] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDERS GRANTING LEAVE TO FILE BRIEFS

On application of Mr. Donald Richberg, leave is hereby granted to file a brief in this cause on behalf of Shop Craft Unions within ten (10) days.

[Title omitted]

On application of Mr. John O. Sprowls, counsel for defendant in error, leave is hereby granted to file a reply brief within seven (7) days of the date of the service of the brief on behalf of the Shop Crafts Union.

[fol. 156] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Before Baker, Evans, and Page, Circuit Judges

OPINION—Filed July 11, 1923

BAKER, Circuit Judge, delivered the opinion of the Court:

This writ of error brings up for review judgments against plaintiffs in error for criminal contempt.

On July 1, 1922, these men went out on the so-called strike of the shop-crafts unions. Shortly thereafter the trial court, on the bill and motion of the railroad company, relator herein, entered a temporary restraining order which was found in this proceeding to have been violated.

I. As the case is here on writ of error the challenge of the sufficiency of the evidence goes only to the question whether a prima facie case of violation was made. Bessette v. W. B. Conkey Co., 194

U. S. 324. We have examined the evidence and find an abundant showing against plaintiffs in error to support the finding of intimidation of shop workmen and of picketing by groups in a manner condemned in recent cases. American Steel Foundries v. Tri-City [fol. 157] Central Trades Council, 257 U. S. 184; Truax v. Corrigan, 257 U. S. 312.

II. After this contempt case had been brought here, the railroad company dismissed its bill for injunction. This did not have the effect of canceling these judgments which had already been entered.

III. Did the court err in overruling the demand of plaintiffs in error for a jury trial?

Section 20 of the Clayton Act (Comp. St. 1918, Sec. 1243 d) speaks of the respective rights of "employers and employees" in any injunction case "involving or growing out of a dispute concerning terms or conditions of employment."

Under Section 21 (Comp. St. 1918, Sec. 1245 a), if an injunctive order is violated by the doing of an act which would be "also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed," the offender shall be proceeded against for contempt as provided in Section 22 (Comp. St. 1918, Sec. 1245 b), namely: "Such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information."

Counsel seem to be agreed, and we think properly so, that plaintiffs in error, in order to have the benefit of the Clayton Act, must have been "employees" within the meaning of the Act from the time of the so-called strike down till after the violations.

They also do not question that the violations would constitute criminal offenses under statutes of the United States and of Wisconsin.

But they do not agree upon the construction of Section 22. Counsel for defendant in error point to the permissive word "may" in the phrases, "the trial may be by a jury" and "the court may impanel a jury." For plaintiffs in error it is argued that the permissive word "may" is to be construed as mandatory wherever that course is necessary in order to preserve the clear meaning of other words and phrases in the context (36 Cyc. p. 1160), and that the word "demand" (to claim as a matter of right) and the phrase "a jury shall [fol. 158] be impaneled" and "such trial shall conform to the practice in criminal cases" require that permission be taken as duty. Obviously there is an ambiguity, an inconsistency, an opposition of words. We think the ambiguity can be cleared by a reference to the history of the times preceding the Clayton Act and a consideration

of the asserted evil to be cured by the proposed legislation. For many years political and social writers and speakers had been denouncing the interference of judges in the combats between labor and capital and had been insisting that the question of unlawful conduct in such combats should not be decided except by jury trial. A political party gave a pledge to abolish "government by injunction," meaning by that quoted phrase the chancellor's use of punitive and coercive means to enforce the chancellor's decree which, after full hearing and subject to the right of appeal for the correction of errors, adjudged that proven trespasses upon property should cease. And the bill, introduced by Senator Clayton, was drafted by the labor unions. As drafted the bill did not contain the ambiguity we now find. In the course of the bill's progress to enactment a word was inserted which may be given a permissive or a mandatory sense. Rather than attribute to Congress an intent to issue a "brutum fulmen," it should be agreed that the intent was to give to the special class in special cases the absolute right to trial by jury.

Nevertheless plaintiffs in error were not entitled to a trial by jury.

(1) If their going out on the so-called shop-crafts strike ended the relation of employer and employee between them and the railroad company, they would not be within the special class selected by the Clayton Act.

In the case of a controversy over wages and conditions of work in a private and local industry, we agree with counsel for plaintiffs in error that a "strike" does not of itself terminate the relation of employer and employee. A controversy arises, and the employees, then at work, say to their employer: "We shall stop work until you are in what we may consider a more reasonable state of mind. We shall deprive you of our labor as a legitimate means of exerting economic pressure to induce you to yield. If we do go out, we shall remain at hand, ready to negotiate with you concerning fair wages and working rules, and ready to return to work the moment we can agree." If, by reason of a failure to agree, the employees stop their work, a "strike" is on. They are no longer working and receiving [fol. 159] wages; but, in the absence of any action other than above indicated looking to a termination of the relationship, they are entitled to rank as "employees" with the adjective "striking" defining their immediate status. And a "lockout" by the employer is the exact counterpart of the "strike" by the employees. In the industrial combat the two sides must have equal and reciprocal rights in exerting economic pressure. 5 Illinois Law Review 453; 31 Yale Journal 321; Iron Moulders' Union v. Allis-Chalmers Co. 166 Fed. 45; Gasaway v. Borderland Coal Corporation, 278 Fed. 56; Uden v. Schaeffer, 188 Pac. 395.

Among the cases in the Supreme Court dealing with the respective rights of capital and labor in economic controversies, those arising in private and local industries predominate. Loewe v. Lawlor, 208 U. S. 274; Paine Lumber Co. v. Neal, 244 U. S. 459; Hitchman Coke & Coal Co. v. Mitchell, 245 U. S. 229; Duplex Co. v. Deering, 254 U. S. 443; American Steel Foundries v. Tri-City Central Trades

Council, 257 U. S. 184; Truax v. Corrigan, 257 U. S. 312. In the American Foundries case, the strike involved a steel plant in Granite City, Illinois. In the Truax case, the center of the industrial storm was a restaurant on "Main Street" in Bisbee, Arizona. In no case of which we have cognizance has the point been made that the rules for economic combats in private and local industries, which society tolerates, have no just application to our present-day system of railroad transportation. When common carriers were few and small and relatively local, when the interference with the non-combatants was no greater than in a private industry, and when the common carrier was unfettered as a combatant, there could be no greater objection to a strike against a common carrier than to one against a restaurant. In all such cases the non-combatants will have to wait until advancing civilization shall have put the strike in limbo with the duel. At the time of the Pullman strike (In re Debs, 158 U. S. 564), though the disturbance in and about Chicago was very considerable, the railroad unions did not have their hands at the throat of the Nation, and the railroads as combatants had not become completely fettered. Today the concerted action of railroad unions in stopping transportation might destroy our industries and imperil the lives of our people. But it is not upon a consideration of public distress or public necessity that we base a legal distinction exempting interstate railroads from the "strikes" that are permissible in private industry. To be a legal distinction (and not a mere suggestion of [fol. 160] further Congressional action) it must be based on the interpretation and application of the law as it stands today.

(a) Interstate railroads are under control of the Interstate Commerce Commission with respect to the nature, quality and amount of service to be given to passengers, to shippers, and to other carriers. Comp. St. 1918, Secs. 8563-8583; Comp. St. 1923, Sec. 8563, Subd. 10-21. This service is the only commodity that the railroads have, from the sale of which they can derive an income. A private employer, free to fight and engage in one of these so-called "industrial combats," might consider it wise to sign a treaty of peace giving his employees higher wages, because legally he could cheapen his commodity to the same degree and thereby keep his business alive. Interstate railroads have no such control of their commodity.

(b) Or the private employer, being legally free to do so, might think it best to make up his increased cost of production by increasing the price of his commodity. Interstate railroads have no such control of their prices. The Interstate Commerce Commission on its own initiative has power to classify and regulate the business, and to fix maximum or minimum, or maximum and minimum, or the particular rates, fares or charges for all the business. Comp. St. 1923, Sec. 8583 (1).

(c) Or the private employer being legally free to do so, might conclude to shut up shop, wind up his business, and quit. Interstate railroads have no legal right to quit. Most of them have State charters for fragmentary parts of their systems. Most of them have parts that were welded together by concurrent permissive legislation of several

States. It is not merely the consequences of violating or failing to live up to the requirements of the State charters that are to be considered; all interstate railroads are now forbidden to "abandon all or any portion of a line of railroad or the operation thereof" without the approval and certified consent of the Commission. If they should attempt to quit without such consent, the Attorney General, or the Commission, or a State Commission, or any party in interest, is authorized to go to court and get an injunction on showing an attempted or intended abandonment of operation. Title IV of the Transportation Act, 1920; Comp. St. 1923, Sec. 8563 (18)-(20).

From the foregoing considerations it is apparent that interstate railroads are bound hand and foot. They have no choice as to what they will sell or for how much. They dare not quit. They are [fol. 161] forbidden by law to quit. They can not exert any sort of "economic pressure" in any sort of "industrial combat." They are powerless to use the "lockout" as a weapon against their employees.* Turning back now to the definition of a "strike," we see that, in an industrial combat wherein the rights of the combatants are equal and reciprocal, the strike was only tolerated as a weapon on one side because the other side was armed with an equivalent weapon. Mutual freedom is the vitals of "collective bargaining" or any bargaining. In our judgment the very principles on which the strike was originally found to be lawful now require that the Interstate Commerce Act and Title IV of the Transportation Act be interpreted and applied to forbid an assault upon a helplessly fettered opponent and to forbid the calling of such an act a combat.

It follows that plaintiffs in error were not engaged in a lawful strike. Their acts toward the railroad company were necessarily the same as those of strangers. Consequently they were not qualified to demand a jury trial under the Clayton Act.

This does not mean that, because employees can not conduct lawful strikes against interstate railroads under the law as it now stands, they have become enslaved or in any way bound to work. Arthur v. Oakes, 63 Fed. 320. It merely means that when they refuse to work, either singly or collectively, they sever themselves from their jobs. They are then at perfect liberty to seek new employment.

(2) Another ground supports the conclusion that plaintiffs in error, on and after July 1, 1922, were not employees carrying on a controversy over wages and working conditions with the railroad company as their employer, and therefore were not entitled to invoke the benefit of the jury provision in the Clayton Act.

In its bill of complaint the railroad company set forth the substance of Title III of the Transportation Act of 1920. Comp. St. 1923, Sec. 10071¼, subd. ee-jjj. That part of the Act creates the Railroad Labor Board and treats of the duties of the Board in reference to wage and other disputes between interstate railroads and their employees. On May 25, 1922, the Board rendered its decision fixing

*The fact that the Commission could not constitutionally deny an interstate railroad the right to abandon its line or a part thereof if there was no reasonable prospect of profitable operation in the future (Bullock v. R. R. Comm. of Florida, 254 U. S. 513, 521), does not militate against the position that an interstate railroad is forbidden by law to use the "lockout."

wages for employees in the shop crafts, to become effective on July 1, 1922. The railroad company accepted said decision, and intended [fol. 162] and attempted to comply therewith; but plaintiffs in error and the other employees in the shop crafts refused to abide by the decision, and in defiance of the Board abandoned the service of the railroad company.

Although beyond a moral sanction there is no penalty for violating the Board's decision except the Board's publication of its opinion that its decision is being violated (Title III of the Act, Sec. 313, Comp. St. 1923, Sec. 10071¼ iii, Pennsylvania Rld. Co. v. United States Railroad Labor Board, — U. S., —, Feb. 19, 1923), that part of the Act declares a public policy which should be accepted and made effective in civil actions irrespective of the character and amount of punishment prescribed for the offenses viewed as crimes or misdemeanors.

In our judgment, therefore, the so-called strike of the shop-crafts unions was a controversy with, or a strike against, the Labor Board as an instrumentality of our National government, and is to be classed with the insurrection of the Boston policemen.

Here, again, there is neither enslavement nor legal compulsion to work; the men are at liberty to quit, singly or collectively, but must recognize that they no longer are employees of their former employer.

(3) Accepting for the sake of the argument the contention of plaintiffs in error that they were entitled to invoke the jury provision of the Clayton Act, nevertheless their demand for a trial by jury was rightly denied because that part of the Act is unconstitutional.

Article III, Sec. 1: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Article III, Sec. 2, Par. 1: "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Article III, Sec. 2, Par. 2, after defining the original jurisdiction of the Supreme Court, proceeds: "In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

The original jurisdiction of the Supreme Court comes directly from the Constitution and can not be enlarged or diminished by Congress. The appellate jurisdiction of the Supreme Court can be [fol. 163] limited as to subject matter and regulated as to procedure. Appellate jurisdiction assumes the existence of trial courts. And Congress in ordaining trial courts and other courts inferior to the Supreme Court can limit their jurisdiction as to subject matter and regulate their procedure. Viewing the inferior courts, and also the Supreme Court as an appellate tribunal, we see that Congress, the agency to exercise the legislative power of the United States, can, as a potter, shape the vessel of jurisdiction, the capacity to receive; but,

the vessel having been made, the judicial power of the United States is poured into the vessel, large or small, not by Congress, but by the Constitution.

Some terms in the Constitution are, and were meant to be, relative. For example, "due process of law" and "liberty" in the Fifth and Fourteenth Amendments were not intended to limit the police power forever to those matters which it had laid hold upon when those amendments were adopted. Other terms are, and were meant to be, absolute. They cover now exactly the same ground they did when adopted, without possibility of enlargement or diminution except by amendment. For example: "Habeas corpus" in Article I, Sec. 9; "trial by jury" in Article III, Sec. 2, Par. 3, and in the Sixth and Seventh Amendments; "cases in law," "cases in equity," "criminal prosecutions," "indictment of a grand jury," "suits at common law," in Article III, Sec. 2, Par. 1, and in the Fifth, Sixth and Seventh Amendments.

Congress may limit the jurisdiction of an inferior court to hearing criminal cases, or to designated kinds of criminal cases; but Congress can not constitutionally deprive the parties in such a court of the right of trial by jury. The same is true of trials of "cases in law." And the jury in such a civil or criminal court must comprise twelve jurors and their verdict must be unanimous. Similarly Congress may limit the jurisdiction of an inferior court to hearing "cases in equity," or to designated kinds of equity cases; but Congress can not constitutionally deprive the parties in an equity court of the right of trial by the chancellor. Martin v. Hunter's Lessees, 1 Wheat. 331; In re Atchison, 284 Fed. 604.

A proceeding called a contempt proceeding, perhaps not very happily, is the means of executing the decree in equity. A plaintiff has been found by a decree in equity to be entitled to enjoy certain property rights without being further disturbed by the defendant. But the defendant persists. To enforce the decree the court may try the deterrent effect of fine, or imprisonment for a definite period, or may [fol. 164] give the plaintiff civil relief by keeping the disturber away until the plaintiff is in the secure enjoyment of his property rights. Either way, the vindication or enforcement of the decree must be held to be an inherent power of the equity court, a power within the power to render the decree. In re Debs, 158 U. S. 564 at pp. 593-6.

The judgments are affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—Filed July 11, 1923

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Wisconsin and was argued by counsel.

[fol. 165] On consideration whereof: It is now here ordered and adjudged by this court that the judgments of the District Court in this cause be, and the same are hereby affirmed with costs.

And afterwards, to-wit: On the ninth day of August, 1923, in the October term aforesaid, there was filed in the office of the clerk of this court a certain petition for rehearing, which said petition for rehearing is not copied here nor made a part of this record.

And afterwards, to-wit: On the twenty-second day of August, 1923, in the October term aforesaid, there was filed in the office of the clerk of this court a certain Answer to Petition for Rehearing which Answer to Petition for Rehearing is not copied here nor made a part of this record.

IN U. S. CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed September 21, 1923

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

[fol. 166] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed December 13, 1923

The Clerk will please prepare a record of proceedings in the Circuit Court of Appeals, together with the record of the District Court, for use in the Supreme Court of the United States in accordance with this præcipe:

Nov. 22, 1923.—Appearance for plaintiff in error.
Dec. 7, 1922.—Appearance for Deft. in error.
April 24, 1923.—Cause set for hearing.
May 2, 1923.—Heard.
June 6, 1923.—Order.
June 11, 1923.—Order.
July 11, 1923.—Opinion.
July 11, 1923.—Judgment.
Sept. 21, 1923.—Order.

Donald R. Richberg, Peter B. Cadigan, John A. Cadigan, by David E. Lilienthal.

[File endorsement omitted.]

[fol. 167] UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 1 to 16, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel, the petition for rehearing and the Answer thereto, and stipulations extending time to file briefs) in the following entitled cause: Sam Michaelson, et al. v. United States, ex rel. C. St. P. M. & O. Railway Company No. 3221, October Term, 1922, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this fourteenth day of December, A. D. 1923.

Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal of the Court.)

[fol. 168] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 708

[Title omitted]

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

On consideration of the petition for a writ of certiorari herein to the United Circuit Court of Appeals for the Seventh Circuit, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

January 14, 1924.

Enl